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87-176 (1)

No.

Supreme Court, U.S.
FILED
JUL 6 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JUNE TERM 1987

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Thomas White, Hardy Burnett, Franklin Leonard
Harold Hampton, David Morgan, Alicia Spears
Elizabeth O'Carroll, Reginald Powell, Karl Davis,
Hubert Smith, Qaardir Muhammad, Arthur L. Jones
Percy Williams, Bernard Murphy, Tommye Brown,
Beverly Pritchett, Clyde Bradley, Philip Morris,
Winfield Garnett, Elijah Maggette,
Adolphus Bailey, Dwight Woodruff,

Petitioners,

vs.

Richard J. Elrod, Sheriff of Cook County,
Phillip T. Hardiman, Director Dept. of Corrections

---

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

---

Pro-se Petitioners
Thomas White et, al.
c/o Philip Morris
148 East 118th St.
Chicago, Il. 60628
(312) 821-7329

176 pet

## Questions Presented

1. Whether the selective prosecution of the Black petitioners among 970 Correctional Deputy Sheriffs simiiarly situated was based on the exercise of first amendment rights of free speech, race or other arbitrary classification.

2. Whether the differences in punishments meted out to the 34 Correctional Deputy Sheriffs for essentially the same charges and findings violated equal protection of the law as stated in the fourteenth amendment.

3. Whether the petitioners were subject to unfair, unreasonable, cruel and unusual punishment in being suspended; or demoted andsuspended; or out right discharged because of skin color in violation of the eighth amendment.

4. Whether the judgement and affirmation by the United States District Court and the United States Court of Appeals were discriminatory against the petitioners because of race.

## PARTIES INVOLVED

THOMAS WHITE -- HARDY BURNETT
FRANKLIN LEONARD --HAROLD HAMPTON
DAVID MORGAN --ELIZABETH O'CARROL
ALICIA SPEARS --REGINALD POWELL
HUBERT SMITH --KARL DAVIS
QAARDIR MUHAMMAD --ARTHUR L. JONES
PERCY WILLIAMS --BERNARD MURPHY
TOMMYE BROWN --BEVERLY PRITCHETT
CLYDE BRADLEY --PHILIP MORRIS
WINFIELD GARNETT --ELIJAH MAGGETTE
ADOLPHUS BAILEY --DWIGHT WOODRUFF

Petitioners,

vs.

RICHARD J. ELROD, Sheriff Cook County
PHILLIP HARDIMAN, Executive Director D.O.C.

Respondents.

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No.

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June Term 1987

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Thomas White et al,

Petitioners,

vs.

Richard Elrod and
Phillip Hardiman

Respondents.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Pro-se Petitioner
Philip Morris
148 East 118th St.
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(312) 821 7329

THOMAS WHITE et, al. Pro-se
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## Opinion Below

The U.S. Court of Appeals decision affirming the U.S. District Court order is attached as App. A.

The U.S.District Court dismissing the petitioners' complaint of violations of the petitioners' rights and discrimination because of race is attached as App. B.

The decision of the Appellate Court of Illinois reversing the Circuit Court decision is attached as App. C.

The case arose from the filing of charges against 34 Correctional Deputy Sheriffs (CO) in Cook County,Illinois on February 14,1980, by the sheriff of Cook County at the Cook County Sheriff's Police and Corrections Merit Board (Merit Bd.). The charges were filed following a labor dispute of wages, benefits, and discrimination between the Black and White deputies. On September 24, 1980, six (6) petitioners were discharged and all others were retained in employment with various punishments. Suits were filed in the U.S. District Court on March 27, 1980, to have the petitioners' constitutional rights considered after the Merit

Bd. overruled the petitioners' continued objections to the petitioners' constitutional rights being violated. The U.S. District Court began trying the case on July 5, 1983, and decided on June 28, 1985. The appeal, above indicated, followed.

## Jurisdiction

The order of the U.S. District Court was entered on June 28, 1985, the petitioners appeal was filed timely; the U.S. Court of Appeals order was entered April 8, 1987, and this Petition for a Writ of Certiorari is filed within 90 days of April 8, 1987. This courts jurisdiction is involked under 28 U.S.C. Sec. 1254 (1).

## Statutory Provision for Jurisdiction

28 U.S.C. Sec. 1254 (1), states, Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgement or decree;

## STATUTES AND CONSTITUTION INVOLVED

Ill. Rev. Stat., Ch. 125, "Sheriffs".

62. Removal, demotion or suspension - procedure Sec. 12. Except as otherwise provided in this Act, no deputy sheriff in the County Police Department and no employee in the County Department of Correction shall be removed, demoted or suspended except for cause, upon written charges filed with the Board by the Sheriff and a hearing before the Board thereon upon not less than 10 days' notice at a place designated by their chairman thereof. ***

USCA, Const. Amend. First: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

USCA, Const. Amend. Fourteen, Sec. 1:

"All persons born or nateralized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

USCA, Const. Amend. Eight:

"Excessive bail shall not be required, nor excessive finesimposed, nor cruel and unusual punishments inflicted."

## Statement of Facts

On January 16, 1980, there was a meeting called of the Cook County Board of Commissioners attended by from 150 to 300 Correctional Deputy Sheriffs at which meeting wage increases and other benefits for COs were discussed. Some of the petitioners and many others were present. No agreement could be reached. On January 20, 1980, the COs began to call in sick on a large scale. On January 21, 1980, the COs formed picket lines to inform the public of the unfair salary and benefits suffered by the Black deputies, and the disparity between white and black deputy sheriffs.* The 'Blu Flu' lasted ten days ending on January 29, 1980. Jan. 30, 1980, 350 to 400 COs returned to work in a group; all COs except 34 were allowed to retun to work. Elrod and Hardiman stated, "In Sheriff Elrod's letter, the reasonable length of time mentioned in points 2 and 3 was up to, and including 29 January 1980; all Officers who did not return by this deadline will be charged before the Cook County Police and Corrections Merit

* App. L, pg 69

Board." Petitioners Clyde Bradley returned on Jan. 27, 1980; Percy Williams returned on Jan. 28,1980; both were suspended and charged as were plaintiffs who returned on Jan. 31, 1980, both were found guilty and penalized the maximum suspension of six months.

Judicial review was sought and circuit court judge James Murray remanded the case back that the Merit Bd. make new and correct findings; there was no susstantially new findings made under the second administrative review. Judge Murray reversed the Merit Bd. in the area of selective prosecution and arbitrary penalties. Judge Murray, however ruled on only three (3) of the seventeen (17) counts filed against the administrative review and refused to consider the other fourteen (14) counts. Sheriff Elrod, Director Hardiman, Assist. Dir. Glotz, Superintendents John Blanks, Leon Cornelius Willard Sullivan and many other top Correctional officials testified that petitioner Arthur L. Jones, "was not part of the job action...", or "...Jones worked... and should not be included in this group;". All these people testified under oath of Jones' innocence, but Jones was charged as being the leader of the job action, tried as

the leader of the job action and fired as the leader of the job action. The Merit Bd.; the U.S. Court of Appels; the U.S. District Court; The Appellate Court of Ill.; and the Ill. Supreme Court have all ignored the sworn testimony of Jones' innocence.

Petitioners Reginal Powell and David Morgan were charged as part of the job action in error, suspended and tried for five months without pay, and reinstated after the sheriff could not prove a case against Powell and Morgan. The U.S. District Court refused to consider the preclusionary rule to Reginal Powell and David Morgan, both of whom received directed verdicts in their favor at the Merit Bd.; Powell and Morgan were lumped with Arthur L. Jones and the other petitioners in a judgement dismissed by US District Judge James Parsons.

Petitioner Adolphus J. Bailey was critcally ill during the blu flu period; he was charged in a Temporary Restraining order on Jan. 23, 1980, and served . Asst. Cook County States Atty. Ellen Robinson requested that Bailey be dropped from the TRO on Jan 25, 1980, because of confirmation that Bailey, was indeed critically ill.

Such request was granted by Cook County Circuit Judge Wosik. Elrod and Hardiman ignored Bailey's illness confirmation and proceded against him anyway. The District Court and the Court of Appeals have upheld the prosecution of Bailey andthe other petitioners because they were poor and Black.

## How Federal Constitutional Questions were Presented

Petitioners filed a timely petition in which was contended, among other things:

1. That petitioners' selection for prosecution was based on race, color of skin and other arbitrary, unconstitutional, inconsistant and biases in violation of Federal and State equal protection clauses.
2. The Merit Bd. violated equal protection and due process of the law in allowing charges against persons known to be innocentand in making findings against the petitioners on matters not contained in the charges, and on charges unsupported by evidence,because of the petitiones' race.
3. The Merit Bd. was guilty of invidious selective punishments by skin color, the darker the skin the harsher the penalty, in violation of the

equal protection and cruel and unusual punishment; this done to make examples of blacks and to whites who associated with blacks.

4. The U.S. District Court and Court of Appeals have ignored constitutional rights violations of the petitioners because of race and skin color; the free speech in redress of greviences by Blacks who are attempting to prevent the return to Apartheid in Cook County; the sworn testimony by the respondents that petitioners are inocent in violation of the due process clause.

## Argument

The record clearly shows that the petitioners were selected for prosecution because of race and skin color and on arbitrary, unjustified, irrational and inconsistant basis in violation of free speech and equal protection clauses as is in the federal and state constitutions (People v. Lewis, 73 Ill. App. 3rd 361, 365, 386 N.E. 2nd 910, 914) ; andbad faith (United States v. Blitstein 626 F. 2nd 774, 782). Moreover, the element of intentional discrimination can be noted at action taken with respect to a particular class or person

(Snowden v. Hughes, 321 U.S. 1, 8. 64 S. Ct 397, 88 L Ed. 497; (Ciechon v. City of Chicago, 686 F. 2d 511, 522.)

The court of appeals opinion states that the selection of the plaintiffs was because 90% of the COs were black and 90% of the ringleaders were black, and because Hardiman is black (App. A pg 2) it is no violation of the laws to prosecute innocent COs, and that white ringleaders can'exacerbate' a job action without penalty. The court of appeals further state that free speech for BLACK CO Bailey is not violated when any and all his actions were prior to the job action , but WHITE COs John Zurek and Carl Carlton can do the same acts as Bailey before, during and after the job action with not accusation made in regards to the white COs. Bailey called in sick (App. A pg 8) and was confirmed by States Atty. Ellen Robinson that Bailey was ill,but BLACK Bailey does not get the same rights as WHITE Zurek and Carlton even though Zurek and Carlton were in meetings,at court and told the white COs what the white COs should do to make the job action effective. Zurek and Carlton spoke long and loud about the disparities btween the

COs' salary and benefits and the salary and benefits of the white deputies. White deputies who were assigned to corrections felt the discrimination same as the black deputies and the white deputies called in sick also; however, the only COs charged were the blacks which were conspired against by the Sheriff and his official staff (more about the conspiracy later) and the white COs who were closely associated with the black COs. If 'exacerbation' was the basis for selection, WHITE COS Zurek and Carlton should have been charged also. There was no evidence that Bailey did anything but exercise his free speech rights prior to the job action and try to get well while the job action was going on. Bailey was named in a TRO ordering him Philip Morris and Thomas White to stop the pickets and order the COs back to work; neither had told anyone not to report for duty, but Bailey attempted to give assistance to the TRO demand by issuing a letter requesting the COs return to work. The request was not honored by the COs because there was no union calling for a strike; each CO was acting on their own accord.

Arthur L. Jones worked during most of the job

action; 90% of the sheriff's administrators and the respondents Elrod and Hardiman all testified that Jones worked. Jones held the exempt rank of Chief of Securityand being a senior member of the staff was working and did work 98 straight hours without relief. Under oath, Elrod and his administrative staff testified "...Jones worked ... should not be part of this group." Hardiman issued a statement on Feb. 4, 1980 that Jones was, "... a senior member of the staff that holds an exempt position and is not included in this number,"App. J pg64. The FIX was in; the members of the Merit Bd., the Ill. Appellate Court, the Supreme Court of Ill., the US District Court and the US Court of Appeals all are decided by whites who ignored the testimony that Jones was innocent; they all blanketed Jones in with the other COs and made a sweeping decision against the black COs and the white COs who dared to associate with the blacks. It is no question that when the accusers get on the witness stand and testify that the accused is innocent, the judge will not hesitate to throw the case out. But with the FIX being in, Jones being poor and black, and Jones having witnessed the conspiracy to "get" the "creeps" meaning the black COs who

were not in the good graces of the administration for having to stand up to white bosses.

Jan. 26, 1980, Arthur Jones was suspended for an alleged insubordination (T 2259) which took place after Jones had worked 98 straight hours without relief and Jones had witnessed the DOC administrators Glotz, Sullivan, Patrick and Cornelius drawing up a "HIT LIST" of 'creeps' they wanted to get rid of. This conspiracy took place in Asst.Dir. Glotz' office on Jan. 23, 1980, (T. 749) Glotz and Supt. Sullivan were already in Glotz' office when Jones arrived. Looking out of the window, Sullivan said ,in Jones' and Glotz' presence, " Now is the time for us to get rid of some of these creeps." (T. 754) Glotz said "Yeah, ... Sullivan." Supts. Patrick and Cornelius walked in and were told of the plan; they were given pieces of paper by Glotz who had told them, including Jones,to write the names of the COs they wanted to get rid of, and Glotz would give the names to Hardiman.The pieces of paper were passed among the conspirators and each saw the names that were on each list; Jones refused to put any names in and Glotz collected the lists. This was testified

under oath by Jones at the Merit Bd. and in Distric Court and unrebutted by the respondents.* (T. 749-761). Jones was called to Hardiman's office on Jan. 26, 1980, and badgered into calling Hardiman a liar in fornt of Hardiman's white peers, Glotz andAsst. Dir. Monohan and Corrections chairman Arthur Waddy was also present. Hardiman immediately suspended Jones for insubordination to place Jones into a position to get fired for refusuing to put names in on the conspiracy. If Jones had been white and was insubordinate (T. 2259) to Hardiman in front of Hardiman's white peers, nothing would have been done; or if Jones had submitted names to the conspiracy, he would not have been badgered into an act of insubordination. (T. 762- 768)

The US District Court upheld and the US Court of Appeals confirmed the Merit BD. violating the petitioners due process rights in consolidating the cases which were unrelated and allowing the respondents to file charges known to be false (App. H) only because the petitioners were poor and black or were whites who associated with black COs.



* (AR 1577- 1580)

The respondents and the members of the Cook County Board of Commissioners were very forward with their intentions of APARTHEID. The COs met with the respondents and the commissioners annually to gain parity with the white deputies; each year,the petitioners and other COs who met with the commissioners and respondents, were told what they needed to do to gain parity with the white deputies. In 1971, the COs were told to wait till next year because there was no funds available; 1972 COs were told to get more education, they did; even the 60 year old COs returned to colledge; 1973, COs were told to wait because of no available funds, COs waited; 1974, COs were told to get some statistics which supported their ideas that the correctional personnel in other areas were getting the same salary and benefits that other deputies got, they did; 1975, COs were told that the statistics gotten in 1974 were reflecting the smaller departments and to get statistics on large areas, they did. No concideration nor intention was ever given to the COs even when the COs did

all that was asked of them in the unfair and biased demands placed by the Cook County authorities as the COs would attepmt to gain parity with the white deputies. 1975, the COs were told that there was no funds available for raises for the COs and to wait until 1976. In June 1975 the COs found the sheriff and the commissioners giving the white deputies 5.5% salary increase retroactive to Dec. 1974. The COs found out about the attempt to SNEEK a salary increase to the white deputies in a mid-year budget supplement. The COs asked the respondent and the commissioners why they attempted to pull a fast one on the COs after telling the COs that the sworn personnel would not get a raise at all in 1975. The answer from the sheriff and the commissioners was that they were trying to keep the (white) sheriff deputies in parity with the Chicago Police Department, (the Chicago Police at 1975 was 85% white). By 1979, the COs had an average of 2½ years of college; the white deputies were just over the 1 year average. 85% of the COs had a 2 year college diploma by 1979 while less than 40% of the white

deputies had a 2 year degree. The Cook County Corrections Department was receiving federal funds for buildings and training which had the COs' hopes up in that there was a possibility that there would be finally some headway into gaining parity with the white deputies. The federal funds were used to further the apartheid in the sheriff department. COs and the white deputies were getting the same training and had to meet the same requirements toget the job and COs had to attend in-service training on a mandatory basis. The training just supported the"EQUAL BUT SEPARATE" theory of apartheid. The charged and punished COs were the result of COOK COUNTY SHERIFF APARTHEID; the darker the CO skin the harsher the penalty. Many of the COs charged in the Blu Flu matter were starved into pleading guilty. The suspended COs with no income could not afford to have their children go hungry while the cases were drug out for nine months. The COs that did hold out were penalized by skin color; the darker skin tone were fired out right; the medium skin tone were demoted and suspended, the light skin tone were only suspended along with the white COs.

The sheriff knowing that he can prosecute the deputies in a selective process that"is almost totally unmonitored" (App.B-9bb),according to Judge Parsons, Elrod just charged on Hardiman's recommendation the deputies who were not in the good graces with management. Judge Parsons' decision was also biased and discriminated against the black deputies in that Judge Parsons based most of his decision on the testimony of Director Hardiman (App. B-9i); this being the case, Judge Parsons should have ruled in favor of Jones, Powell and Morgan upon Hardiman's testimony that, (1) Jones was not part of the job action (Hardiman's testimony was supported by most of the defendant witnesses); Powell and Morgan were given directed verdicts in their favor by the merit board because these were two black deputies who were also innocent; (2) when a witness for the opposition in even a murder case testifies that <u>the accused did not do it</u> the judge without question lets the accused go. This is direct and undisputed violation of the equal protection and due process clauses. Also, Judge Parsons in his opinion/order states the

ingredients needed to win a ruling in violations of 42 U.S.C. 1985 (3)(See, App. B-9o) and we find Jones,Powell and Morgan fit all five ingredients perfectly without question as admitted by Hardiman in testimony under oath. The conspiracy was witnessed and testified to by Jones on at least two occasions without rebuttal; (unrebutted testimony is deemed true) racial or other invidious motive is that even after testifying to the error, Hardiman nor Elrod would withdraw the incorrect charges and return the black deputies to their positions; not withdrawing the incorrect charges and a continued prosecution of innocent deputies is complete violation of equal protection of the laws; to further the conspiracy, that Jones refused to participate in,Jones was charged with a job action that he did not participate in (App. B-9g-h--Judge Parsons knew this ) and the injury was that Jones, Powell and Morgan were acting as normal deputies doing nothing to further the job action but lost time and funds and Jones' job thur the conspiracy of the sheriff and director. With these ingredients,

which Judge Parsons made a great point of stressing, in line, it is only right and of FUNDALMENTAL FAIRNESS and THE LAW that without any hesitation nor question Jones, Morgan and Powell should receive damages and compensation for the injuries they suffered which were known to all the courts which the plantiffs here appeared. The PREDJUCED attention given these BLACK deputies so openly leaves much doubt as to the fairness received by the remaining plaintiffs and the BLACK Cook County deputies at large.

Ten years of begging for parity with the white deputies; meeting all the requirements, put on the black deputies by the county officials, in vain; watching Federal Funds go into the Dept of Corrections only to see APARTHEID advance; and seeing the sheriff and director conspire against the black deputies without any recourse thru the Illinois Judicial system means that JUSTICE in Illinois is a JOKE. The Greylord scandal is the proof of only the traffic courts. This invidious

inconsistent punishments displays a drastic abuse of due process.

A comparison of the Merit Boards findings as to Arthur Jones (discharged) and those of others who were discharged and those not discharged. Chief Arthur Jones was called and reported to work January 22, 1980, and Chief Jones worked 98 hours without relief until January 26, 1980 when he was suspended for an infraction not related to a job action.

1. The findings as to Jones were identical to the findings of Bailey, Bradley, Smith, and White (Bailey then held rank of Lieutenant; Bradley and White held rank of officer; Smith held the rank of Sergeant). Bailey, was suspended and demoted two ranks and Smith was suspended and demoted one rank, Bradley was suspended, and White was discharged.

2. The findings as to Burnett (rank officer); Williams (officer); Muhammad and Maggette (officer); Murphy (Sergeant) were identical to those of Morris (Lieutenant), except Morris was found guilty of obstruction of service of

process; however, Morris and all others were served. Burnett, Williams and Muhammad were suspended; Murphy was suspended and demoted one rank; Morris was discharged as was Maggette.

3. The findings as to Brown (officer); Garnett (officer); Leonard (officer); Spears (officer); and Woodruff (officer) were identical except the latter were not found guilty of failing to return to work as ordered by the Circuit Court of Cook County. Considering the fact that hundreds of correctional officers were in the court when Judge Wosik orally ordered them back to work and Judge Wosik imposed no punishment on any officers, this item affords no rational basis for Brown and Garnett being discharged and Leonard, Spears and Woodruff being suspended.

It is abundantly clear that there was invidious discrimination not only between those punished and those not punished but even among the plaintiffs who were punished severely.

3. The Merit Board violated Petitioner's due process rights in basing its decision on matters not contained in the charges and upon insufficient evidence.

The Appellate Court concedes that the Merit Board erred in finding Petitioners guilty of failing to stay at home while absent from work, but says the remaining findings were sufficient to support the varied punishments involked. However, item 6 of the findings alleged that Petitioners failed to report for duty on January 29, 1980 as ordered by mailgram. No such charge was filed against any of the Petitioners.

Item 4 of the findings alleges, that Petitioners failed to furnish doctor's verifications of alleged illness in violation of G.O. 78-11, Sec. 21(E)(4). The basic charge in Count II was that Petitioners were absent from duty without leave or permission not that they failed to furnish a doctor's slip upon return to duty. Bradley and Burnett were on vacation

during period in question; Bradley returned to work and worked January 29, 1980, as ordered, to be covered by Sheriff Elrods' amnesty letter and was suspended. Burnett returned to work January 30, 1980 and was not allowed to enter the Department. Jones had worked January 22 through January 26, 1980 until sent home by Director Hardiman; Jones returned to work January 30, 1980 and was not allowed to work. Count II did not apply to Bradley, Burnett nor Jones, but all were found as not furnishing a doctors verification. All petitioners as well as the other plaintiffs were ordered not allowed on the Department premises as of 4:00 P.M. January 30, 1980. The ban order on the 34 plaintiffs prevented any of them submitting doctor's verifications, which most of them had. There was no evidence that any of the petitioners were asked for a medical slip nor that such slip played any part in the department's refusal to return them to work. Moreover, neither General Order No. 78-11, Sec. VI (E)(4) nor the Emergency Procedures Memorandum of January 18,

1980, prescribes punishment for failure to produce a doctor's slip but simply prescribe what documentation is needed in order to pay an employee for sick time.

Finding 2 alleges that the Petitioners acted in concert with others to jeopardize the security of the institution of Art. VIII Sec. B(4) (violation of any G.O.) and (10) (neglect to perform duties of R&R and G.O. 78-13 Sec. B(5) and (12). G.O. 78-13 Sec. B(5) was never mentioned in the charges, and G.O. 78-13 Sec. B(5) deals with action or inaction by one on duty allowing contraband, weapons and the like to come into the institution. Sec. B(12) refers to "creating, contributing to or concealing a disorder in the institution by act or omission". There is simply no evidence that Petitioners, or other plaintiffs or any employee, created, contributed or concealed a disorder or that a disorder did occur. There was testimony that some officers, such as Chief Jones, worked extra shifts and additional help was secured but not that any disorder occurred.

The absence of 970 officers created inconveniences but not disorder or riots. Moreover, if this did not require any discipline as to over 930 absent officers, the defendants have shown by their actions that this finding constitutes no cause for such drastic punishments.

Finding 5 alleges failure to return to work as ordered by the Circuit Court in violation of Art. VIII, Sec. B(7) (failure to obey a lawful order) and G.O. 78-13, Sec. (B)(11) (acts of disobedience or disrespect to a superior officer, etc.). It is submitted that the sections allegedly violated refer to orders of a superior officer and disrespect to a superior officer and not to court orders which are properly enforced by the court. The Petitioners Bradley and Burnett vacationing out of town would not be able to hear the court order, Jones was working at the time of the court order, Bailey was released from the court order. Further, the Petitioners who did return to work in a reasonable time from the Court Order were

sent home, denied entry, suspended and locked out.

The Petitioners concede that an agency's findings and conclusion on questions of fact are to be held as prima facia true and correct, but this presumption does not apply to questions of law or legal interpretations of rules. (Leslie Car Wash v. Ill. Dept. of Revenue, 39 Ill. App. 3d 931, 351 N.E. 2d 296, 299). The board's interpretation of the applicability of some of its rules is erroneous and constitutes an attempt to force the rule to fit "puffed up" findings.

4. The penalties placed on the Petitioners were excessive and a gross abuse of discretion and violated due process and the public policy of maintaining consistent and even handed justice.

Throughout this proceeding, Petitioners have maintained that the imposition of the drastic penalties were, under the facts of this case, unreasonable, unnecessary and a manifest abuse of discretion. This contention was independent

of the issues of selective prosecution and selective punishment.

Courts have the right and duty to determine whether, under all the facts and circumstaces, cause for removal exists. (Caliendo v. Goodrich, 34 Ill. App. 3d 1072, 1075-76, Kreiser v. Police Board of Chicago, 69 Ill. 2d 27; and to remand for imposition of a lesser measure of discipline. Res v. Civil Comm., 49 Ill. App. 3d 852, Thomas v. Police Board, 90 Ill. App. 3d 1101, Kreiser v. Police Board, 69 Ill. 2d 27, 370 N.E. 2d 511, 513). Petitioners were employed up to 22 years with clear records. Some of the Petitioners did and some Petitioners did not participate in the job action (Jones, Bradley, Burnett, Bailey and Williams did not) over wages and benefits. Both Sheriff Elrod and Director Hardiman said the employees were entitled to a raise (AR 368). Judge Wosik endeavored to get the employees an 8% raise (AR 605-607). The imposition of economic and professional extremes of detriment upon the Petitioners was a gross abuse of discretion and unjust.

The Appellate Court, in passing on the constitutional issues of selectivity, justified the penalties "in order to deter future strikes" . However, it did not discuss the issues of gross abuse of discretion in quantum of punishments. In any event, Cook County Department of Correction has been unionized as of the writing of this brief with collective bargaining rights, (which was a major issue in the job action) and a deterence from "future strikes" is no longer an issue.

Further, the discriminatory punishments imposed on the Petitioners violated the policy of consistency and even handed justice in disciplinary matters (People v. Godinez, 92 Ill. App. 3d 523, 415 N.E. 2d 36, 38, 47 Ill. Dec. 311, 313, Basketfield v. Daniel 71 Ill. App. 3d 877, 390 N.E. 2d 492, 495, 28 Ill. Dec. 325, 328).

Because of the Appellate Court's failure to consider the issues discussed in this point, this court should grant certiorari.

5. The Appellate Court erred in failing to hold that plaintiffs were not entitled to amnesty granted to others who also returned to work on January 30, 1980.

The Appellate Court did not consider the amnesty issue raised by the Petitioners and other plaintiffs because they did not return to work until January 30, 1980. The court stated that a memo of Director Hardiman and a letter of Sheriff Elrod restricted the amnesty to those returning to work by January 29, 1980.

The record shows that the letter from Sheriff Elrod to Reverend Jackson was dated January 23, 1980, and stated in relevant part: (AR 1624 Jones Exhibit 1-4 pages)

Dear Reverend Jackson:

Pursuant to our meeting this morning, January 23, 1980, I agree that:

* * *

2. That I will not attempt to separate from the Department of Corrections any person that participated in the "job action" provided that the action is settled within a reasonable length of time;

* * *

Subsequently, on February 4, 1980, 5 days after everyone had reported for work, Director Hardiman issued a memorandum in part as follows:

> There has been much discussion about what agreement was reached regarding fringe benefits, and some confusion as to what was granted.
>
> Attached are letters from President George Dunne and Sheriff Richard Elrod regarding those benefits.
>
> In Sheriff Elrod's letter, the reasonable length of time mentioned in points 2 and 3 was up to, and including 29 January 1980; all Officers who did not return by this deadline will be charged before the Cook County Police and Corrections Merit Board.

App. J

It is apparent that a settlement was reached on January 29, 1980, and that all of the time between January 20, and January 29, should be counted as excused absence.* Thus a return on January 30, 1980, would be within the terms of the agreement between the Sheriff and Reverend Jackson. It is noted that no notice of a mutual change in this agreement was isued on or before January 30. Hardiman's unilateral memo of February 4, 1980* was after the fact and after the Petitioners and other plaintiffs had been suspended from work. Additionally, as hereinbefore shown, about 350 officers reported for duty on January 30 of which 316 were returned to duty without discipline. This situation is similar to that in Olshock v. Village of Skokie, 541 F. 2d 1254, 1259 where those returning on July 13, 1975, were only suspended and those returning on July 14, 1975, were discharged. The court there stated:

> "Nowhere does the record or the findings indicate that the discharged men were advised by anyone that



* App. J

July 13, was a crucial deadline between future professional life an death. And, in fact the "deadline" was not actually adhered to..."

Athough estoppel is not a favored remedy when asserting against a public body, in this instance, it is only fair to hold the Sheriff and Executive Director to their promise. Courts, in determining whether to apply estoppel to public bodies, have looked to see whether the officer or agent had authority to bind the public body. Anderson v. Board of Trustees of Community College, 56 Ill. App. 3rd 937, 14 Ill. Dec. 522 (4th Dist. 1978). The facts before the trial court merited a determination that Sheriff Elrod not only had the authority to excuse absences, but that he and Executive Director Hardiman are the highest authorities who could have authorized the "grace period". Ill. Rev. Stat. Ch. 125 Sec. 203 authorizes the Sheriff in counties with populations over 1,000,000 to operate and have jurisdiction over the county jail. Section 204 specifies that the Sheriff

shall appoint a five-member board to establish rules and regulations to implement the Department of Corrections but, "The Board shall not have administrative or executive duties and shall not deal with specific procedural matters". Further, Section 212 states that the Sheriff shall appoint an Executive Director who shall act as chief executor and administrative officer of the Department of Corrections. By statute, Sheriff Elrod and Executive Director Hardiman are the two highest officers of the Department.

By virtue of Sheriff Elrod's and Executive Director Hardiman's positions, the Merit Board is estopped from denying their authority to excuse absences from duty. Anderson v. Board of Trustees, supra. There is a parallel between the facts of this case and Stahelin v. Board of Education, 87 Ill. App. 2d 28, 230 N.E. 2d 465 (2nd Dist., 1967), wherein the court affirmed that estoppel may operate against the State when acting in its governmental capacity, and that if, under the circumstances, affirmative acts of

the public body have created a situation which it would be unjust to permit it to deny, estoppel may be applied.

The respondents both knowingly and wrecklessly in disregard for human, civil, and legal rights of Arthur L. Jones, testified that Jones was innocent of the charges against Jones; estoppel was a real and available option to right the wrong they had erronously done to Jones. The intent - to 'get' Jones was not to be changed because Jones was dangerous to the intent to press the Sheriff's APARTHEID measures into Cook County on an open scale. Jones had witnessed the CONSPIRACY on the part of the Sheriff and his staff; Jones had testified under oath of the conspiracy, unrebutted, and not even the U.S. Court of Appeals would acknowledge that there was reason to investigate the posibility of the testimony being true. Unrebutted testimony is deemed to be true. Hardiman was soposítive that Jones would be firedthat he even reduced to writing that Jones was innocent, App. J pg 64, and issued the notice to the D.C.C.

Admittedly Jones, Powell, Morgan, Bailey and a number of other petitioners should not have had the charges which were placed against them or they should not have been charged at all. But the FIX was in; theconspiracy on the names was made; charges were placed against the 'HIT LIST' of "Creeps'; and the Merit Bd. hearings were going to take a long time. This was a direct attempt to starve the black Deputy Sheriffs into submission for daring to stand up to white folks about thedisparities between the black and white deputy sheriffs.

The district court and court of appeals upheld and confirmed the Merit Board invidious selective punishments in suspending to the maximum, demoting and suspending or discharging the plaintiffs for substantiallythe same conduct because of skin color; other plaintiffs were merely suspended. The plaintiffs discharged were the dark complexion blacks; the plaintiffs demote and suspended were the medium complexion blacks; the plaintiffs only suspended were the light complexion blacks or the whites who associated with blacks. This is true apartheid which is a direct disregard for your

rders on civil rights and your desisions on discrimination because of race.

The district court and court of appeals upheld and confirmed the Merit Bd. violation of the petitioners due process rights in basing its decisions on matters not contained in the charges; on race; insufficient evidence; and on skin color. The Circuit Court ordered the Merit Bd. to make correct and proper findings on the charges on July 12, 1982. The Merit Board returned the second set of findings with no substantial changes because these black COs were to be examplesto the other black COs who may dare to question white administrators ordare to stand up for themselves in this growing APARTHEID society in Cook County, Ill. The circuit court reversed the Merit Bd. On appeal by the respondents herein, the Appellate Court of Ill. reversed the circuit court. There was no explaination given for the differing penalties in that a Chief of Security who worked and was insubordinant allegedly was fired; alieutenant was confirmed as being ill was demoted two ranks and suspended six months; a lieutenant who attended some meetings and did not picket was fired; officers who did not picket nor attend meetings were fired ; officers who did attend meetings and picketed were only suspended.

In 1970, black deputies were only 500.00 behind the white deputies in annual salary; each year the white deputies would be given the same percentage salary increase; and by 1979, the salary gap between the two racially separated deputies groups*. In 1975, the white deputies were given a 5.5% salary increase retroactive to Dec.1, 1974, when the black deputies would ask why the salary increase was not given to the black deputies also the petitioners and otehr black deputies were told by the respondents and Cook County Commissioners that the white duputies were being kept in parity with the Chicago Police Department in salary (the Chicago Police were 90% white at that time. This was another raising of the ugly head of APARTHEID in Cook County and at the direction of the sheriff. Discrimination and racial bias in the Cook County Sheriff Dept. totally ignores your decisions and orders on discrimination and civil rights. Such regard for violating rights of blacks is witnessed in the recent HANGING of a black man by whites who carved KKK in the man's chest. The Cook County courts have been caught in the Greylord bribes

*$2500 gap existed

thus giving mistrust to judicial system in Cook County on a large scale. The high officials feel comfortable in dealing unfairly with the blacks thus these random charges were trumped up against the petitioners, and the Merit Bd. dished out findings as randomly in order to 'whip the black creeps in line'. Supreme Court orders on discrimination and civil rights are being trampeled with no recourse.

The US Court of Appeals displayed their biases in the, "... ground decision is questionable with regard to the two plaintiffs who prevailed before the Merit Board... but rather question begging, is that a finding that is not essential to the judgement has no collateral estoppel effect." Had the two petitioners been white the questionable and question begging decision would have been unquestionable of precluding the plaintiff from raising claims in this suit upon gaining directed verdicts in their favor from the Merit Bd.

## Conclusion

Based on the foregoing, PetitionersT. White, H. H. Burnett, F. Leonard, H. Hampton, D. Morgan, E. O'Carrol, A. Spears, R. Powell, H. Smith, K. Davis, Q. Muhammad, A.L. Jones, P. Williams, B. Murphy, T. Brown, B. Pritchett, C. Bradley, P. Morris, W. Garnett, E. Maggette, A. Bailey, D. Woodruff submit that this court should grant leave to appeal for the following reasons:

1. The absence of a relevant opinion by this court on the constitutional issues and seletive and punishment of the black deputies who were attempting to gain parity with white deputies.

2. The conflict between the majority and the dissenting opinion in Strobeck v. Illinois Civil Service Comm., 70 Ill. App. 3d 772.

3. The apperent conflict between Strobeck and Battle v. Illinois Civil Service Comm. with reference to Ciechoc v. City of Chicago, 686 F. 2d 511. 2nd Olshock v. Village of Skosie, 541 Fed. 2d 1254 (both Illinois related).

In Ciechon the court said (686 F.2d 522):

> The disciplinary proceedings against Ciechon also constituted a denial of equal protection of the law because they represented an arbitrary, irrational decision to discriminate among the two paramedics, Ciechon and Ritt, who were equally responsible for the welfare of the patient on all ambulance runs. Thus two persons similarly situated, in that they experienced the same set of circumstances and were equally responsible for patient assessment and treatment, were treated absolutely differently. Ciechon was charged with failure to perform her duties and discharged; Ritt was never charged or disciplined in any fashion. Since the discrimination was intentional, the equal protection clause was violated. United States v. Falk, 479 F.2d 616, 619 (7th Cir. 1973) (en banc)."

The court then concluded its equal protection ruling by saying (686 F.2d 524):

> The unequal treatment of Ciechon and Ritt was unreasonable and arbitrary and deprived Ciechon of equal protection of law. See Olshock v. Village of Skokie, 541 F.2d 1254, 1260 (7th Cir. 1976). Since the City had not even a rational basis for its disparate treatment of Ciechon and Ritt, no defense to the equal protection clause has been made out. Accordingly, we affirm the judgment of the district court on this additional ground.

4. The undisposed issues involving Amnesty, Excessive Punishment and Consistant and Even Handed Justice.

5. The unresolved matter of the respondents in this matter testifying of the innocence of petitioner Arthur L. Jones and not any of the justices reinstating Jones on such testimony.

6. The disregard for the Supreme Court decisions and orders on civil rights and discrimination.

7. The use of the federal funds targeted for training to further Apartheid.

Respectfully submitted,
Pro-se Petitioners
Thomas White et al,

Philip Morris Contact
for the petitioners(pro-se
148 East 118 street
Chicago, Il. 60628
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# APPENDIX

Appendicies

Opinion of the U.S. Court of Appeals for the Seventh Circuit .....App..A, pg 1

Judgement order of the U.S. District Court for the Northern District, Eastern Division .....App. B, pg 9

Opinion of the Appellate Court of Illinois .....App. C, pg 11

Opinion of the Trial Court.....App. D, pg 33

Judgement of the Trial Court.....App. E, pg 52

Second order of the Merit Board.....App. F, pg 55

Arthur L. Jones suspension letter...App. G, pg 56

Arthur L. Jones charges at Merit Bd.App. H, pg 57

February 4, 1980, DOC Memorandum by Hardiman .....App. J, pg 64

Philip Morris findings at Merit Bd..App. K, pg 65

Philip Morris suspension letter.....App. L, pg 69

In the
United States Court of Appeals
For the Seventh Circuit

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o. 85-2267

homas White, et al.,

Plaintiffs-Appellants,

v.

ichard J. Elrod and
Phillip Hardiman,

Defendants-Appellees.

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Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Division.
No. 80 C 1524--James B. Parsons, Judge.

---

Argued December 5, 1986--Decided April 8, 1987

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Before Cudahy and Posner, Circuit Judges, and anne, District Judge.*

Posner, Circuit Judge. This appeal by jail uards from a decision by the district court dis-issing their civil rights suit under 42 U.S.C. 1983 grows out of an illegal strike in 1980. he guards were employed by the Cook County orrections Department, which is under the juris-iction of the Sheriff of Cook County. At the ime this was Richard Elrod. The department's irector was Phillip Hardiman. Hardiman and about

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* Hon. Michael S. Kanne of the Northern District f Indiana, sitting by designation.

90 percent of the department's staff were black. The jail guards, who made up the bulk of the sta were angry because they were paid less than deput sheriffs, who are also under the jurisdiction of the sheriff but do not work in the corrections department. A much higher fraction of guards tha of deputy sheriffs was black, and many of the blacks felt that the disparity in wages, reflecte racial prejudice. When the department refused to raise the wages of the jail guards, a number of them organized a "sick out" or "blue flu" work stoppage. For 10 days, more than 85 percent of the 900 guards called in sick, and during this period the 5,000 inmates of the Cook County Jail were inadequately guarded. Hardiman and Elrod wanted to fire all the strikers, but they realized that if they did so the security problem in the jail would become catastrophic before replacements for the fired guards could be hired and trained. So they decided to fire just those guards who had organized or "exacerbated" the strike. They sent

letters to 34 guards, most of whom were black (at least two, and maybe more, were white, however), suspending them for "desertion of post to the jeopardy of security" until the Cook County Police and Corrections Merit Review Board determined the merit of this charge. The work stoppage ended.

Twenty-two of the 34 guards who had been suspended brought this suit against Elrod and Hardiman. They charged that the suspensions constituted selective prosecution in violation of the equal protection clause, had been racially motivated (and hence violated the equal protection clause in an additional sense), and had been in retaliation for the plaintiffs' exercise of their free speech. Sixteen of the original plaintiffs remain, the others having defaulted along the way. Two of the 16 were reinstated by the Merit Board with back pay, the Board having dismissed the charges against them. Two others pleaded guilty before the Board and were reinstated without back pay.

Eventually this case was tried. Meanwhile,

11 of the 16 remaining plaintiffs, having failed to obtain reinstatement, had appealed the Merit Board's action to the Circuit Court of Cook County, which reversed. (The sixteenth plaintif had also been found guilty by the Board, but he did not seek judicial review.) The Illinois Appellate Court, however, reversed the circuit court and reinstated the Merit Board's decision. The appellate court's decision was handed down after the bench trial in the present case was over and while the district judge was preparing his findings of fact and conclusions of law. The defendants showed the decision to the judge, and he held that the present suit was barred by res judicata, and ordered the complaint dismissed.

The ground of decision is questionable with regard to the two plaintiffs who prevailed before the Merit Board. The defendants point out that the Board rejected all of the plaintiffs' constitutional claims, and they argue that this rejection should preclude these two plaintiffs as well as the others from raising the claims in this

suit, even though the Board dismissed the defendants' charges against these two. There are two replies to this argument. The first, well established in Illinois law but rather question-begging, is that a finding that is not essential to the judgment has no collateral estoppel effect. Decatur Housing Authority ex rel. Harlan E. Moore & Co. v. Christy-Foltz, Inc., 117 Ill. App. 3d 1077, 1082, 454 N.E.2d 379, 383 (1983). A finding rejecting the plaintiffs' constitutional claims was not essential to a judgment reinstating them. The second reply, more functional but not the subject of a reported Illinois case, is that when a decision of a tribunal of first instance is subject to appeal, the decision cannot be given collateral estoppel (or res judicata) effect if the party sought to be bound could not have appealed it, for example because he had won. See 1B Moore's Federal Practice ¶ 0.416[1], at p. 515 (2d ed. 1984); 18 Wright, Miller & Cooper, Federal Practice and Procedure §§ 4421, 4433 (1981). The idea is that the finding is not sufficiently

reliable, without the opportunity for appellate review of it, to be made incontestable in a subsequent suit.

Either principle would defeat the defendants argument, except that the Merit Board apparently did not give the two plaintiffs whom it reinstate complete relief, and presumably they could have appealed from this partially adverse outsome. Th record does not make clear whether the shortfall was trivial, in which event we don't suppose the failure to appeal could be thought important on the question of collateral estoppel, or significant, in which event it would be important; a part should not be allowed to pocket the favorable part of the decision and bring a fresh suit to upset the unfavorable part. In view of these doubts, and our confidence about an alternative ground (of which more later) for upholding the district court's decision, we decline to apply collateral estoppel to these two plaintiffs.

Their ground for resisting collateral estoppel is not, however, available to any of the other

plaintiffs, including the two who pleaded guilty and were then reinstated. By pleading guilty they waived any right to challenge their guilt on appeal. Their situation is the same as that of parties who, having a right of appeal, allow the deadline for appealing to expire without filing an appeal. The judgment of the trial court in such a case has the same preclusive effect as if it had been affirmed.

The other plaintiffs were able to appeal and all but one did, but they argue that they were forbidden to introduce evidence of their constitutional claims before the Merit Board. It is true that the Board took the position that it need not and would not consider those claims. Nevertheless, in appealing to the circuit court the plaintiffs argued both the selective-prosecution and free-speech claims, and they continued to do so in the appellate court, which expressly rejected both claims. Neither decision refers to the remaining constitutional claim (racial discrimination).

We can find no basis in Illinois law for the

Merit Board's refusal to consider the plaintiffs' federal constitutional grounds for reinstatement. The statute under which the Board operated provide that a correctional officer may not be fired excep for cause, after written charges have been filed by the Sheriff of Cook County and after an opportunity for a hearing at which the officer is entitled to a "full opportunity to be heard . . . and produce proof in his defense." Ill. Ann. Stat. ch. 125, § 62 (since repealed). It would violate the supremacy clause for the Board to take the position that the exercise of federal constitutional rights is "cause" for being fired; nor does anyone suggest that this is the Board's position. If a fired employee contends that the sheriff fired him not for cause but for reasons forbidden by the U.S. Constitution, nothing in any statute or case law of Illinois suggests that the Board cannot hear evidence in support of the contention, and the statutory language quoted above suggests it can, as does Green v. Board of Fire & Police Comm'rs, 87 Ill. App. 3d 183, 188,

408 N.E.2d 1187, 1191 (1980), and Fox v. Civil Service Comm'n, 66 Ill. App. 3d 381, 392, 383 N.E.2d 1201, 1208 (1978). It seems, then, that the Board made a mistake of state law in refusing to consider the plaintiffs' constitutional claims; and for such a mistake the remedy is an appeal to the state courts.

This is not a case like Jones v. City of Alton, 757 F.2d 878 (7th Cir. 1985), where a local civil service commission held that a police officer's claim that he had been fired because of his race was irrelevant to whether he should be fired for shoplifting--and the circuit and appellate courts agreed, so that the officer could get no hearing in the state system on his constitutional claim. If the plaintiffs in this case had asked the Illinois courts for a remand to enable the Board to determine their constitutional defenses and the courts had refused, this case would be like Jones. But the plaintiffs didn't do this. Instead they asked the courts to decide their constitutional claims on the basis of the

record compiled before the Board. They apparently believed that, despite its unwillingness to consider those claims, the Board had let in enough evidence to establish their merit. Certainly the courts did not think themselves barred from considering these claims. The circuit court reversed on the ground of improper selective prosecution, and the appellate court reversed the circuit court on the ground that selective prosecution is not unconstitutional and that the plaintiffs had no First Amendment right to engage in an illegal strike. (The plaintiffs do not argue that the strike was legal under Illinois law; a wildcat strike by jail guards is the quintessence of illegal strike activity.) The plaintiffs had a full hearing on their constitutional claims before courts of competent jurisdiction in Illinois, and lost on the merits. That judgment is a bar to their proceeding on the same claims, or claims arising from the same facts, in federal court. All that was missing was an initial decision by the Board on those claims--a lack that the

plaintiffs could have complained of in the Illinois courts but decided not to.

This, however, does not dispose of the two plaintiffs who won their cases before the Merit Board.

Before the district judge got around to discussing res judicata, he devoted 27 pages of his opinion to a review of the plaintiffs' claims on the merits, rejecting every one and concluding that "the evidence adduced at trial supports the choice the defendants made, and justifies the entry of judgment for them." He apparently thought, however, that if the suit was barred by res judicata, the appropriate disposition was not to enter judgment for the defendants but to dismiss the complaint. This was an error. Res judicata is a defense like any other--it is not jurisdictional--and, if it is proved, the defendants are entitled to judgment on the merits. The judge wasn't required to drop the substantive issues as soon as he discovered that the defendants had a good res judicata defense.

App A - 5c

But we need not stand on ceremony. The judge made clear that he thought the defendants were entitled to judgment because the plaintiffs had failed to prove any violations of federal law. If he was right, it would be futile to remand the case to permit him to change the judgment from dismissal of the complaint for want of jurisdiction to judgment for defendants on the merits. We can do it ourselves, provided that the findings of fact which he made are not clearly erroneous and establish that there was no violation of federal law.

The two plaintiffs whose claims are not barred by res judicata failed to prove racial discrimination. Most of the staff of the corrections department was black, the director was black, and 90 percent of the ringleaders were black, because part of the gripe about the difference in pay between the guards and the deputy sheriffs was that a much higher proportion of deputy sheriffs than guards was white. So it was highly likely, quite apart from any racial animus against black

guards, that the vast majority of the suspended guards would be black. The plaintiffs point to two white guards who were not suspended and who they say also "exacerbated" the strike, but the district judge was not required to infer from this discrepancy that the suspension of the plaintiffs was racially motivated.

The plaintiffs' claim that their suspension was a species of selective in the sense of arbitrary prosecution (for besides and as a concimitant of suspending them the defendants lodged charges against the plaintiffs with the Merit Board) both undermines their claims that the suspensions were motivated by racial animus or retaliatory intent and lacks constitutional significance. Almost all prosecution is incomplete and to a degree arbitrary, the virtually random ticketing of speeders being merely the most familiar example. American governments do not have the will or resources to prosecute all malefactors, and unless the choice of whom to prosecute is based on invidious grounds such as race

or the exercise of free speech there is no constitutional violation. Wayte v. United States, 470 U.S. 598, 608-10 (1985); Ustrak v. Fairman, 781 F.2d 573, 575 (7th Cir. 1986); Hameetman v. City of Chicago, 776 F.2d 636, 641 (7th Cir. 1985). Here, as a matter of fact, the argument for selective prosecution was overwhelming: if the defendants suspended all the strikers, the Cook County Jail would be unmanageable; by suspending the ringleaders and other "exacerbators" the defendants hoped, successfully in the event, to paralyze the body by removing the head. No doubt in picking out 34 to suspend, the defendants overlooked others equally culpable, but circumstances did not permit and the United States Constitution did not require a finer discrimination than was attempted.

Finally, a law violator cannot buy immunity from prosecution by coupling his violation with advocacy and then complaining that his advocacy led the government to single him out to prosecute for the violation--even if his speculation about the government's motive is true. Wayte v. United

States, supra, 470 U.S. at 611-14. The government is allowed to get a bigger bang for its buck by concentrating its limited resources on those who flaunt their offenses, since proceedings against them are apt to generate more publicity and therefore communicate a more effective deterrent than proceedings against the obscure and denying violator. That is (so far as appears) all that happened here. A further point is that organizing and exacerbating a strike by urging others on is difficult in practice to distinguish from urging redress of the real or imagined grievances that provide the occasion or pretext for the strike. It is natural that the leaders should be most vocal in proclaiming the abuses that they say prompted them to act, but as we have said this cannot buy them immunity from prosecution. There is no evidence that anyone was fired who merely advocated a higher wage and did not also urge or assist the strike; the closest to such a person is Aldophus Bailey, who did not picket--but he did call in sick, and as president of the local

police union his participation in the strike undoubtedly assisted it. There is also no evidence that any ringleader or "exacerbator" was fired because of his ideas rather than his conduct.

As modified in accordance with this opinion, the judgment of the district court is

AFFIRMED.

A true Copy:

Teste:

Clerk of the United States
Court of Appeals for the
Seventh Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| In The Matter Of: | |
| WHIET, THOMAS<br>BURNETT, HARDY C.<br>LEONARD, FRANKLIN<br>HAMPTON, HAROLD<br>MORGAN, DAVID E.<br>O'CARROLL, ELIZABETH<br>SPEARS, ALICIA<br>POWELL, REGINALD<br>SMITH, HUBERT<br>DAVIS, KARL H.<br>MUHAMMAD, QAADIR<br>JONES, ARTHUR L.<br>WILLIAMS, PERCY B.<br>MURPHY, BERNARD<br>BROWN, TOMMYE<br>PRITCHETT, BEVERLY D.<br>BRADLEY, CLYDE C.<br>MORRIS, PHILIP<br>GARNETT, WINFIELD<br>MAGGETTE, ELIJAH<br>BAILEY, ADOLPHUS<br>WOODRUFF, DWIGHT | No. 80 C 1524 |
| Plaintiffs, | |
| vs. | |
| RICHARD J. ELROD<br>PHILLIP HARDIMAN | |
| Defendants. | |

MEMORANDUM OPINION AND ORDER

Introduction

This case had its genesis during Jan. of 1980 when a "sick-out" or "blue flu" type of work

toppage was put on by the security personnel
f the Department of Correct ions of Cook
ounty, Illinois. Not many years earlier the
ourts of Cook County had two major criminal
ivisions: the Municipal Court ofChicago, which
andled misdemeanors and violations of the
rdinances of the city, and the Circuit and
uperior Courts of Cook County which handled
ll of the felonies in the County. The two types
f courts were serviced by two separate detention
nd penal facilities: the Chicago House of
orrections under comtrol of a warden housed
inor detatiees and prescns serving time fro
isdemeanors, and the Cook County Jail, one of
he numerous responsibilities of the Sheriff of
ook County, housed detainees charged with
rimes "against the People of the State of Ill".
See Ill. Rev. Stat., Ch. 125,ss203 et seq.,1969.

During the latter 1960's and early 1970's
he Criminal Justice system of Ill. underwent
number of up-dating changes, including an
bsorption by the Circuit Court of Cook County
f the Municipal Court of Chicago and a merger
f Chicago's House of Correction and Cook Count's

jail into a Cook County Department of Correctio managed by an Executive Director under the Sheri of Cook County. The Cook County Board of Commissioners headed by the County President was the governing body. See Wallace M. Milliken, The Unified Trial Court, Ill Bar. J., Mar. 1962 at 668, and Harry G. Fins, Analysis of Illinois Judicial Article of 1961 and Its Legislative and Judicial Implementation, De Paul L. Rev. 185, 1 (1962), and George D. Braden and Ruben G. Cohn, The Illinois Constitution: An Annotated and Comparative Analysis, 349-380 (1969).

The changes introduced new relationships among county employees and modern innovations in the field of corrections. One of them was the construction of new facilities for personnel and the adoption of the new job title of Corrections Officer. Deputy Sheriffs, Sheriff's Police and Bailiffs served under the Sheriff in other but related organizations. Restlessness developed among the Corrections Officers due, among other things, to the different salary schedules and position classifications between them and the Cook County Deputy Sheriffs and Police.

During the beginning days of 1980 discus-
ions were held among Corrections Officers
oncerning the elevation of their salary sche-
ules to cause them to parallel those of Deputy
heriffs. Many Corrections Officers were like
eputy Sheriffs members of the Fraternal Order of
olice and they had in the Department Lodge No.
0 of the F.O.P. that assumed an organizational
ole with relation to salary raises. At the out-
et it should be noted that approximately 90% of
he Department's Corrections Officers were blacks.
his approximated the racial make up of their
etainees and prisoners. This racial make up
id not attain among the Deputy Sheriffs. It is
ot unusual that the Corrections Officers assumed
hat the difference reflected racial consideration
n the part of management.

On Jan. 16, 1980, there came about a meeting
etween the corrections officers and the President
f the Cook County Board of Commissioners in the
oard Room of the Commissioners. Between 150 and
200 corrections officers attended. Their several
leaders and spokesmen are listed among the 16
laintiffs in this c ase. Management was then in

persons of the Sheriff and the Executive Director of his Department of Corrections. The two of them are defendents in this case. Demand was made for a pay increase of 10-12%, but Pres. George W. Dunne informed the officers that budget problems prohibited a salary increase. According to the evidence adduced at the trial of this case, when the meeting ended, a leader of the officers was heard to say something to the effect that a "Phase One" would go into effect. While he was leaving the meeting Sheriff Elrod was handed a piece of paper that had been found lying about which indicated that the invocation of "phase One" meant that a work stoppage was to begin on Jan. 20th.

Within a very short time after the meeting, Director Hardiman got a Strike Emergency Porcedures Memorandum prepared. It directed the officers to attend their stations and suspended all furloughs and leaves. Copies were distributed by the six divisions superintendents of the Corrections Dept. among the officers. They were posted on the bulletin boards of the facility, read at roll calls and on Jan. 18th distributed

th the officers pay checks.

On Jan. 20th, as had been indicated, the ork stoppage began. It continued for 10 days. orrections officers called in sick or took leave me off. Before Jan 30th the work stoppage an bsenteeism of between 950 and 970 officers, wards of 85% of the personnel. The Cook County ept. of Corrections is one of the largest etention centers in the country. Because of the, ccess of the work stoppage, practically the ole population of the 5000 inmates were left ithout daily personal supervision and without ransportation to or from courts. During much of is 10 day period, pickets moved about and stood groups and outside the department's structures.

OnJan. 23rd, Cook County Board President unne, Sheriff Elrod and Director Hardiman had special meeting in President Dunne's conference oom with a Rev. Jesse Jackson, the organizer nd leader of Operation P.U.S.H., a Chicago ased human relations organization who, at the fficers request, sought to intercede on their ehalf. Also acting on behalf of the officers ere a Thomas White, a Philip Morris, a Tommye

Brown (three of the plaintiffs herein) and a Rev Reddick, one of the Rev. Jesse Jackson's assistants. The evidend is that it was Thomas White who had asked Rev. Jackson to try to negotiate the wage dispute on behalf of the striking corrections officers. During the meeting Sheriff Elrod made a presentation which later that day he included in a follow-up letter to the Rev. the officers to return to work. It was ignored.*

Later that day Director Hardiman and Sheriff Elrod prepared mailgrams to be sent to all officers in the dept. threatening disciplinary action those who should not have returned to work by Jan 29, 1980. Dir. Hardiman prepared form suspension letters, intending to mail one to each of the officers who should have failed to report to work on his regular shift of duty on that same 29th day of Jan. These letters were dated Jan. 28, 1980. Before they were mailed, however, and at a time when the strikers were returning to work on their shifts, Sheriff Elrod made a very

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* This illustrates the bold strength even against the powers of the court of 900 men acting in concert but unorganized--unified men without leaders who can be jailed or bank accounts that can be attached. When even a temporary return to pre-strike status is desparately needed in the

terest of public order and safety, the
eformance of management must be viewed wiht
understanding of the dilemma it faces.
ither Congress nor the Constitution intended
e threat of civil rights suits and prosecutions
freeze management into frightened inaction.

portant decision. He decided and communicated
Dir. Hardiman the order that only those who
uld be determined to have "exacerbated" the
trike would receive the Hardiman suspension
tters, and only those more difficult and
trike-responsible persons would be immediately
spended. This delayed the suspension letters
nother day.

On Jan. 30, 1980, Dir. Hardiman sent out
irty-three of the form suspension letters
tifying the officers to whom they were addressed
at they had violated Department General Order
-13(b)(14), which prohibits "desertion of post
the jeopardy of security." The letter suspen-
d the officers to whom it was addressed, pen-
ng resolutionof charges against them to be
aced before the Merit Board. Then by letter
ted the next day, Jan. 31, 1980, Section Chief
thur Jones, a supervisor, but not a striker
so was suspended pending resolution by the
rit Bd. of charges against him. His charges

alleged insubordination.

Evidence introduced at the trial shows that on or before the end of Jan. 30, 1980, all of the officers who are plaintiffs in this case with the possible exception of Plaintiff Jones, had reported or sought to report for duty. Several days later, on Feb. 14, 1980, formal charges againts the suspended officers included the plaintiffshere, were filed with the Merit Bd. In substance all of the charges were the same, except that plaintiffs Philip Morris, Winfield Garnett, Thomas White and Clyde Bradley also had additional charges placed against them. As stated above the charges against plaintiff Arthur Jones were not strictly strike related. Some of the plaintiffs herein sought to report to duty after the 29 day suspension period was over, but the defendant refused to allow them to return to work because the Merit Bd. had not finished its work. Some of the plaintiffs tried but were unable to collect unemployment compensation because of the charge on their records that they had deserted their jobs during the strike. Still others were unable to qualify for unemployment insurance because they were at the time receiving from the

epartment of Corrections vacation pay in lieu
f their regular wages. The frustrations that
ollowed contributed to the plaintiffs' decision
o jointly bring this civil rights suit.

The Merit Board proceedings extended over a
ubstantial period of time. In the course of those
rocedings, plaintiffs Reginald Powell and David
organ received directed verdicts in their favor
nd reinstated though they remained plaintiffs
ere. Nine of the plaintiffs were suspended:
lyed Bradley, Beverly Pritchett, Karl Davis,
ubert Smith, Bernard Murphy, Hardy Burnett,
dolphus Bailey, Qaadir Muhammad and Harold Hampton.
he remaning plaintiffs Philip Morris, Winfield
arnett, Tommye Brown, Thomas White and Arthur
ones were fully terminated.

Dir. Hardiman, the defendant most aquainted
ith what happened, when testifying as a witness
t the trial of this case explained at length the
heriff Elrod determinations to seek disciplinary
ction against only those officers who had "exa
erbated" the situation. He testified that
heriff Elrod was particularly concerned that
the officers be not only leaders but be persons
gainst whom the department could prove they had

reported in sick on at least two occasions between Jan. 20 and Jan. 30, when at the same time they had been observed by witnesses to have been participating in strike related activities in which they would not have been able to participate had they truthfully been ill. Dir. Hardiman stated unequivocally that in his discissions with Sheriff Elrod when trying to determine who had "exacerbated" the striking situation, and therefore would be subject to discipline, they determined the starting point of exacerbation to have begun with the activities and statements of the officers prior to the strike, and specifically at the time of the Jan. 16th meeting in the course of which the threat of a strike became evident.

Dir. Hardiman testified as an example that one one of the things that brought Plaintiffs Morris, White and Bailey to his attention as leaders of the strike was that Sheriff Elrod and he, Dir Hardiman, had found out from the news media that on or about Jan. 16th, these officers had given information to a black newspaper, The Chicago Defender, confirming that a could be

expected. Dir. Hardiman testified also that as to the 33 persons originally suspended (which group included the 16 plaintiffs here) he had been advised by the States Attorny's Office that a stronger case could be made before the Merit Bd. against them than could be made out against the other strikers. His testimony was to the effect that most of those who were suspended (and the numbered was over 900) also had engaged in the sick out scheme, had disobeyed the order of Judge Wosik to go back to work, and many instances had participated in the picketing. Again under questioning by the Court, Dir. Hardiman also confirmed with regard to Officer Adolphus Bailey, that he was never seen at Operation P.U.S.H. meetings, at the County Board meetings, in Judge Wosik's courtroom, or in a picket line, but that he should be suspended because he had been a principal advocate of pressures to get what they wanted before the strike began, and had "sounded out the longest" against their pay scale.

Taken as a whole, the evidence is that 33 were singled out for suspension because they

were perceived in varying degrees to have been the leaders and organizers of the strike. According to Hardiman they had been observed to be prominent in sponsering and encourging the strike, and played the leading role in seeking to force management to yield, or they later acted to frustrate management's efforts to end the work stoppage without giving in to the strikers' demands.

Statutory Basis for the Case

42 U.S.C. 1981

Theories of the complaint are not asserted under separate courts. In their one count the sixteen plaintiffs allege that the defendants violated Sec.1981, 1985 (3) and 1983 of Title 42 United States Code, and otherwise violated the Constitution of the United States.

A group of plaintiffs may not succeed under 42 U.S.C. ss 1981, as plaintiffs have asserted here, absent proof that the defendants intentionally and purposefully discriminated against them because of their race. General Building Contractors Association v. Pennsylvania, 458 U.S. 375, 382-391 (1982). In this regard the plaintiffs

ave failed to prove that the actions of the def-
ndants were the result of intentional racial
iscrimination. Despite the fact that as a group
he plaintiffs might seem to fall within the
rotective ambit of Section 1981, the facts
dmitted into evidence utterly fail to demon-
trate a violation of Sec. 1981. The controlling
acts are that, as stated above, in very round
igures approximately 90% of the correctional
fficers were black and only approximately 10%
ere whites. This same percentage carried over
nto the black and white strikers. In addition,
he decisions were primarily made by the director
f the department, Mr. Hardiman, who is himself
black person, though made with the approval
f the Sheriff, a white person. The decision
ith relationship of the 16 plaintiffs had
othing to do with their race. There is for
xample, no evidence that Elrod and Hardiman
ook the course they followed because the men
he plaintiffs chose to negoitate on their
ehalf, The Rev. Jesse Jackson of Operation
.U.S.H., was a successful leader of blacks on
ehalf of black causes. I find that the evidence

is insufficient to lay a foundation for discrimination on the basis of race against the group as a whole or against anyone of them individually.

Whether or not 42 U.S.C. ss 1981 requires racial or other invidious discriminatory intent on the part of the defendents here is not subject to rebate. This type of intent is required. See: General Building Contractors Assn. Inc. v. Pennsylvania, 458 U.S. 375 (1982); Mt. Healthy City School Dist. Bd. of Ed. v. Doyle, 429 U.S. 274, (1977); Arlington Hgts. v. Metro Housing Corp., 429 U.S. 252, 217 (1977); Bishop v. Wood, 426 U.S. 341, 349-50 (1976); Runyon v. McCrary, 427 U.S. 160, 170-171 (1976); Mescall v. Burrus, 603 F. 2d 1266, 1269-71 (7th Cir. 1979); Garcia v. Rush Presbyterian St. Luke's Medical Center, 80 F.R.D. 254, 264 (N.D. Ill. 1973). I repeat that there is no such evidence whatsoever of such intent. To the contrary the evidence is that just as the overwhelming majority of the prisoners are blacks, so were the were the overwhelming majority of the corrections officers themselves were blacks. Inferently it is illogical, in the absence of any affirmative evidence

f racial discrimination, to assume that racial
nomus existed in this case where the supervising
fficers, the investigating officers and even
he departmental director himself were all of the
ame race as the plaintiffs here. Such intent is
special type of intent that requires for proof
special type of evidence not found in the facts
f this case.

2 U.S.C. 1985(3)

The elements of a charge under ss 1985 just
not exist in the setting of this case either.
are as in most other cases which allege 1983
d 1985(3) violations, the charges tend to
rack each other. As plaintiffs' counsel himself
cited so correctly (see page 8 of the brief
d argument on behalf of the plaintiffs filed
ept. 26, 1983):

> "Private individuals state and local officials in their individual and official capacities can be sued under ss 1985(3). To come within Section 1985 (3), a complaint must allege 5 elements: (1) conspiracy; (2) motivated by racial or prehaps otherwise class based, invidiously discriminatory animus; (3) 'for purpose of depriving directly or indirectly, any person or class of persons of equal protection of the laws, or of equal privileges and immunities under the laws'; (4) that the conspirators committed some act in furtherance of the conspiracy; and

(5) that the plaintiff was either injured in his person or property or was deprived thereof because of his having exercised any right or privilege of a citizen of the United States'.

Plaintiffs' discission on this ss 1985(3) charge goes on to assert that the action brought by the defendants against the plaintiffs (presumably the bringing of the injunction petition before Judge Wosik, or the filing of the disciplinary charges with the Merit Bd.) was unlawful and therefore was inviolation of ss 1985(3). They charged in effect that defendants conspired to file the petition and the disciplinary charge to prevent the plaintiffs from exercising first amendment rights to freedom of speech or to punish them because they already had engaged in freedom of speech.

It is conceivable that an agreement between the executive director of a state agency and his superior to use the judicial process to work out a problem between them and their staff, but for them to violate Sec. 1985(3) the agreement must have been the product of a racially discriminatory or other similar invidious purpose. Facts would have to have been proved beyond what?

were proved here. In this case no conspiracy between Sheriff Elrod and Director Hardiman to use the judicial process for such a purpose was ever proved, nor can such an agreement be inferred. And there is no evidence tending to show that the defendents have been hostile toward blacks or towadr blacks who speak freely in the sense that free speech is constitutionally protected.

What probably is meant by this charge in the complaint is that the defendants in their filings before the Merit Bd. intended to distinguish between the strikers generally and the plaintiffs as strikers, and that the distinction was racial and necessarily involved informational speech. But exacerbating a strike likelihood into a strike in fact, or exacerbating a strike in fact into one of sufficient power to close down the department was not to exercise a constitutionally protected right. I am unable to find the offense here against Sec. 1985(3). 42 U.S.C. ss1983

The theory under which the plaintiffs' claims would have to succeed, if they succeed at

all, is that of a Sec.1983 claim. Sec. 1983 provides:

> "Every person who, under color of any statute ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

This statute is based on section 2 of the Civil Rights Act of 1866. It was a part of a statutory scheme designed to establish the role of the Federal government as the guarantor of basic federal civil rights as against actions undertaken under the color of state power. Mitchum v. Foster, 407 U.S. 225, 238-39 (1972). The statute covers acts by individuals "who carry a badge of authority of a state and represent it in some capacity, whether they act in accordance with their authority or misuse it." Monroe v. Pape, 365 U.S. 167, 172 (1961); See 13 E. Cooper, A. Miller & C. Wright, Federal Practice and Procedure, ss 3575 at 491 (1975). If Sec. 1983 were to be applied here, the plaintiffs

would have had to have proven that the defendants deprived them of some federal right and that the defendants when doing so were acting under the color of State law. Gomez v. Toledo, 446 U.S. 635 (1980).

Under the Constitution, the federal government guarantees to all persons equal protection of the law and asserts that guarantee as against state action through the Fourteenth Amendment. For plaintiffs to prevail under this provision they would have to have shown that they were singled out for prosecution while others similarly situated were not. Here again, if they met this first showing, they then would have to demonstrate that the defendants' discriminatory selection of them as against all the rest of the 970 was invidious or in bad faith in that it rested upon such impermissable considerations as race, religion, or the desire to punish for or to prevent the exercise of one of certain especially protected rights.

This calls for a view of the selective prosecution theory from a perspective that could permit any one or all of the plaintiffs

to recover from either or both the defendants, if in doing what he did such defendant created for the plaintiff an unlawful classification under the Equal Protection Clause of the Foruteenth Amendment.

Selective prosecution, as it is referred to by the plaintiffs, does not in this case create for them an invidiousclassification. It is well settled today that a distinction so made is not improper as long as it would be more rational, considering all of the circumstances, than the alternatives available to the defendants. Here the alternatives would have been no prosecution of anyone or the prosecution of all. Either of these courses of action would have been ridiculous in light of what would have been the consequenses. No facts were brought forth by the plaintiffsbearing upon this issue, and no inferences reasonably can be deducted from the facts in evidence which would support the plaintiffs in a claim of unlawful selective prosecution as a violation of 1983. See, generally' Wayte v. United States, _____ U.S. _____ (1985), 105 S. Ct. 1524; Personnel Administrator of Massachusettes v. Freeny, 442 U.S. 256 (1979) ; Arlington Heights v. Metropolitan Housing Development

Corporation, 429 U.S. 252 (1977); Washington v. Davis, 426 U.S. 229 (1976). These cases do not involve the situation we have here, but the reasoning of the Supreme Court in them can serve as a guide to us. I think that the gist of the reasoning applies to this claim of the plaintiffs is that which implied by the Supreme Court in United States v. O'Brien, 391 U.S. 367, 376-377 (1968), where with relation to another type of setting but one in which the problem arose when it was asserted that a speech regulation (here we have the use of the Merit Bd. to discipline) is legally permissible:

> "... if it is within the constitutional power of the Government; if it furthers an interest; if the governmental interest is unrelated to the surpression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherence of that interest."**

In this case only the third condition is open to dispute and no evidence has been advanced by plaintiffs in support of their position.

In United States v. Greene, 697 F. 2d 1229, 1234 (5th Cir. 1983) cert. denied, _____ U.S. _____, 103 S. Ct. 3542, 77 L. Ed. 1391

(1983), the Fifth Circuit dealy with the government's prosecution of striking air traffic contorl specialists who were fired merely because they were officers of P.A.T.C.O. at the time of a strike. The court shated, however:

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** ( Incidental note not part of quote: The phrase governmental "function" has a special meaning in Illinois case decisions when it is used as a reference to the official activities of the state or one of its subdivisions. When a fire truck is on its way to put out a fire, as differing from when it is proceeding to an intersection where the firemen are to join a parade, like when a teacher is engaged in instructing a fifth grade class in English as differing from when such teacher is drilling the school band in preparation for that parade, a governmental purpose is being performed. When the park district employees aed engaged in arranging the music shell to be used by the city's orchestra on the Fourth of July, they are performing a propriety function. For a careful discussion of this distiction and the powers and liabilities it involves, see, Taylor v. City of Berwyn, 372 Ill. 124 (1939). Corrections Officers are engaged in performing governmental functions whenever on duty)

> "(T)he mere exercise of some selectivity by the government in instituting prosecutions is not itself a constitutional violation. (citations omitted) Moreover, absent an invidious purpose, selection of cases for close investigation and for prosecution is not permissible merely because it focuses upon those most vocal in encouraging concerted action to violatethe law." 697 F. 2d at 1234.

The plaintiffs here were oviously treated differently from the other 950 striking officers, but the only plaintiffs who can prevail under a

heory of selective prosecution are those who n addition can and did present evidence demonstrating an "invidious purpose" or one resulting n the denial of some constitutional right.

I remind, there is no race problem here. nd in this case the issue became not the right o picket while a lawful strike is going one. It s not the right to speak to the press about a hreatened strike. It is not the right to be associated with strikers or even proclaim to the ublic their virtues. It is the right to advocate, o encourage it into an almost totally effective trike of state corrections officers against the tate prison they operate.

The Right to Strike

Under the common law of Illinois, public mployees, including corrections officers have o protected right to strike. In City of Pana v. rowe, 57 ill. 2d 547, 316 N.E. 2d 513 (1974), a ase dealing with the illinois Anti-Injunction ct, the Ill. Supreme Court stated:

> (T)he history of the statute indicates, in our opinion, that it was not intended to apply to work stoppages by governmental employees...In 1925 strikes by governmental employees were universally considered unlawful, and this view prevails generally today in tha absence of legislative

sanction. Id. at 513-514.

Citing its earlier decision in Board of Education v. Redding, 32 Ill. 2d 567 N.E. 2d 427 (1965), the Pana court went on to say at page 514:

> The underlying basis for the policy against strikes by public employees is the sound and demanding notion that governmental functions may not not be impeded or obstructed, as well as the concept that the profit motive, inherent in the principle of free enterprise, is absent in the governmental function. 32 Ill. 2d at 571-572, 207 N.E. 2d at 430.

Today the State of Ill. by statute has withdrawn even further the strike as a labor action that can be engagen in by law enforcement officers. See: Ill. Rev. Stat. ch. 48, par. 1617 (1984). Further under Ill. law , correctional officers are considered law enforcement officers for purposes of compensation and presumably for other related purposes. See: Ill. Rev. Stat. ch. 48, par, 282(a) (1984). This court concludes that correctional officers in Ill. definitely are not permitted by law to strike. An awareness of the severity of the prohibition is important to the trier of fact in determining the

reasonableness of the action of a state agency taken to bring about an early cessation of a strike put on by its law enforcement officers and to tend to discourage its recurrence. Accordingly, in the case of these correctional officers, there was no organized union, and no right as such to strike. The U.S. Comstitution does not make a guarantee of what we habitually refer to as the "right to strike". ad there been a state right to strike, this right, of course, would have earned full faith and credit in our federal courts. This court is obliged to recognize that in Ill. there is no protected right as such belonging to any public official to strike. See: Strobeck v. Ill. Civil Serv. Comm., 70 Ill. App. 3d 772 (1979). Participation in any manner in an illegal work stoppage by a corrections officer is not itself protected by the first Amendment nor by any other amendment to the Constitution of the U.S.

A Case of Selective Prosecution

I am convinced by the evidence that all the plaintiffs, whether or not they engaged in the actual work stoppage, lent support to it in a

manner that influenced others to engage in it. All of them did one or more of the following things: I1) helped organize the strike. (2) obtained intercession on behalf of the strikers of Operation P.U.S.H. and its leadership; (3) attended and spoke out at strike organizational meetings; (4) attended a meeting with the president of the county board where the threat of a strike was used as a bargaining point in an effort to get him to agree to a salary increase; (5) acted as volunteer representatives of the corrections officers; (6) directed the corrections officers to follow through; (7) engaged in picketing or assisted the pickets by furnishing them with such services as signs or coffee; (8) stayed away from work, calling in sick or taking annual leaveto try to get the department's records to cover their absences; (9) disobeyed the emergency directions of the director of the department; and (10) allowed the prestige of their command status to encourage the officers to keep the strike going in face of repeated orders of Judge Wosik, the Sheriff and the Director. One of the 16 plaintiffs was the personnel

Representative of the Dept., one was a Chief of Security, two were lieutenants and two were sergeants. Two were officers of the F.O.P., one of whom admitted attending strike planning meetings at Operation P.U.S.H. on five different occasions.

The degree of involvement of each of the plaintiffs varied all the way from plaintiffs who were modestly involved to plaintiffs who were deeply involved as strike leaders.

And even though Chief of Security Arthur Jones stayed on his job throughout the strike, working at one time 96 hours without a break, he disagreed with Hardiman's assigning to the several supervisors the task of developing the list of officers to be disciplined, and on at least one occasion attempted to frustrate this program.

This is an ordinary case of selective prosecution. In most labor-management disputes labor is represented by unions which have entered into agreements with management that establish the rules about the use of the power to strike as a labor weapon and the power to lock-out as a weapon of management. Naturally, it comes as a

shock to many workers who legally have no right to strike to discover that striking will likely cost some of them their jobs on the basis of a selective process that is almost totally unmonitored. Many of the plaintiffs in this case believed from the beginning that there is a fundamental right to strike and that they could not be selected indicriminately for discharge as examples to the rest of the strikers without management violating some law or some constitutional provision. In this case they havebeen tragically mistaken, and the court's decosion in their case cannot be the product of sympathy.

The position of corrections officer is not just another job. You have to qualify for it, be certified for it, appointed to it and closely monitored in the performance of it. You may join organizations but not "unionize" in them. Once i the position you are a public law enforcement officer with serious responsibilities for and powers over other people. By common law, regulations and by statutory and case law, once in it you can't desert it without leaving it, nor strike against it while retaining a right to it.

From the evidence in this case, it appeared clearly that each of the plaintiffs herein was aware of and understood the implications of this type of public employment. Each found himself in conflict with it and then when disciplined in the course of such conflict sought in this case a shelter from any painful consequences flowing from such conflict through federal civil rights statutes. Furnishing such shelter is not the purpose of federal civil rights statutes.

A Matter of Preclusive Effect

At the time this case was on trial, the cases before the Merit Bd. had been heard and had been decided adversely to most of the plaintiffs here. Rehearings had been exhausted, and appeals had been filed before the Circuit Court of Cook County. Since the trial of this case, but before the present dispositive decision and judgement in it, the appeals of the Merit Bd. determination had been reversed by the Circuit Court and appeals from the court's decision had been taken to the Ill. Appellate Court. Within the last several months the rulings of that

court, reversing the Circuit Court and reinstating the determinations of the Merit Bd. had been handed down and an appeal from it by way of a Petition for leave to appeal to the Ill. Supreme Court had been filed. On April 2, 1985, the Ill. Supreme Court denied the petition for leave to appeal, and the decision of the Ill. Appellate Court sustaining and reinstating the Merit Bd's. determinations, including rulings against 12 of the plaintiffs in this case became final.

Prior to these events, on Jan. 30, 1985, the defendants in this case filed a motion with brief seeking to supplement the record in this case with eveidenc of procedings to that date of the state courts relating to the Jan. 1980 strike at the Cook County Dept. of Corrections. Levae now has been given both the plaintiffs and defendants to supplement the record, and thi court has received and considered supplemental materials from both plaintiffs and the defendants bringing up to date the related state proceedings. This court takes judicial notice of the following matters,(See: Mandarino v. Pollard, 718 F. 2d 845 849 (7th Cir. 1983):

(1) The Disciplinary Proceedings before the Cook County Police And Corrections Merit Bd. in regards to the defendants in the instant case filed between Jan. 20, 1980 and Feb. 14, 1980.

(2) The appeal from matters before the Cir. Court of Cook County to the Appellate Court of Ill., 1st Judicial Dist. in the case of O'Carroll, et al., appellees, vs. Elrod and Hardiman et al., appellants, carrying the filing number of 83-2979, 83-2980, 83-2981 and 83-3020 and decided July 12, 198-.

(3) Petition before the Ill. Supreme Court in the case of O'Carroll,et al., petitioners and Elrod and Hardiman, et al., respondents, numbered 61336, and decided Apr. 2, 1985.

It now appears that the courts of the State of Ill. have conclusively determined that the disciplinary action taken by the plaintiffs in those cases against the plaintiffs in this one growing out of their conduct with relation to the srtike of Jan, 1980, while serving as the corrections officers of the Cook County Dept. of Corrections, was justified and lawful.

It is the same strike and the same conduct of the same persons with relation to, which are the subject matter of this federal civil rights case. For these reasons the defendantsherein, contend, in addition to their contentions concerning which this court has just in detail

addressed itself that there now has been brought to unaviodable consideration the question often referred to as "claim preclusive effect" resulting from the decision of the Ill. judicial system. Dose the state court action constitute res judicata as to my decision in this case? For the reasons set out below, I conclude (1) that "claim preclusion" takes effect. (See: Sec. 1738, Title 28, U.S.C. which implements the full faith and credit clause of the constitution of the United States Article IV, Sec. 1) I conclude that in this case I am obliged to accept as conclusively and properly decided by the decisions of the Merit Bd. and the Ill. Appellate Court, all the same matters involved in this case before me, and that I must incorporate those decisions as my decisions in this case.

The doctrine of issue preclusion is well settled under Ill. law, and according to the teachings of the Supreme Court in a recent Seventh Circuit case cited to me by thedefendantsherein, applies to the circumstances here. As accounted for in the concurring opinion of

the Chief Justice:

> "The states that recognize the jurisdictional competency requirements do do not all define it in the same terms. Ill. courts have expressed the doctrine in the following manner: 'The principle (of res judicata) extends not only to questions which were actually litigated but also to all questions which could have been raised or determined.' Spiller v. Continental Tube Co., 95 Ill. 2d 423, 432, 447 N.E. 2d 834, 838 (1983) (emphasis added); see also e.g., LaSalle National Bank v. County Bd. of School Trustees, 61 Ill. 2d 524, 529, 337 N.E. 2d 19, 22 (1975); People v. Kidd, 398 Ill. 405, 408, 75 N.E. 2d 851, 853-854 (1947)."

The doctrine of issue preclusion in 42 U.S.C. ss 1983 actions generally bar"federal courts from freshly deciding constitutional issues previously litigated in state courts". Kremer v. Chemical Construction Corp., 456 U.S. 461, 476 (1981); Allen v. McCurry, 449 U.S. 90, 99 (1980); Marrese et al. v. American Academy of Orthopedic Surgeons, ____ U.S. _____, 45 CC H S. Ct. Bull. P.B. 1394 (1985).

According to the above, I am convinced under the circumstances that evtering a final judgement in the instant case is precluded, and that to do so would be to act with disregard for the provisions of 28 U.S.C. 1738. It has been decided by

the courts of Ill. that the actions of the defendants herein concerning which the plaintiffs sue were not violation of the Constitution and laws of the United States. Accordingly, this case must now be and the same hereby is dismissed.

ENTER:

James B. Parsons
United States District Ct.Judge

DATED: June 28, 1985

The text of this opinion may be changed or corrected prior to the time for filing of a petition for Rehearing or the disposition of the same.

83-2979
83-2980
83-2981
83-3020
Consolidated

Second Division
December 11, 1984

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| ELIZABETH O'CARROLL, Plaintiff-Appellee, | ) | Appeal from the Circuit Court of Cook County. |
| FRANKLIN LEONARD and ALICIA SPEARS, Plaintiffs-Appellees, | ) | |
| ELIJAH MAGGETTE, Plaintiff-Appellee, | ) | |
| HARDY BURNETT, HUBERT SMITH, QAADIR A. MUHAMMED, ARTHUR L. JONES, PERCY WILLIAMS, BERNARD MURPHY, TOMMYE BROWN, CLYDE C. BRADLEY, PHILLIP MORRIS, WINFIELD GARNETT, THOMAS WHITE, and ADOLPHUS BAILEY, Plaintiffs-Appellees, | ) | |
| vs. | ) | |
| COOK COUNTY POLICE and CORRECTIONS MERIT BOARD, ROBERT A. NOVELLE, SAMUEL W. NOLAN, E. JAMES GARBUT, RICHARD J. ELROD) Sheriff of Cook County, and PHILLIP T. HARDIMAN, Executive Director, Cook County Department of Corrections, Defendants-Appellants. | ) | Honorable James C. Murray, Judge Presiding. |

83-2980
83-2981
83-3020 Consolidated

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

The causes were brought before the Cook County Police and Corrections Merit Board (Merit Board) by the Sheriff of Cook County, seeking disciplinary action against the plaintiffs for their participation in a work stoppage at the Cook County Department of Corrections (Department) in January 1980. The work stoppage involved approximately 970 correctional officers, of whom 34 were suspended by the Department. Fifteen of those suspended were returned to duty with time off their jobs considered served. Charges were filed by the Sheriff with the Merit Board against 18 of the officers. The Merit Board discharged six of the 18, demoted and suspended three and suspended nine. Sixteen of the disciplined officers filed complaints for administrative review. Upon administrative

review, the circuit court of Cook County remanded the causes to the Merit Board for findings of fact. Upon further review, the circuit court reversed the orders of the Merit Board and defendants now appeal.

On January 20, 1980, employees of the Department of Corrections began a work stoppage at the Cook County Jail complex. This work stoppage continued until January 30, 1980, and was characterized by substantial numbers of officers failing to report for work and calling in sick; the number of officers involved varying from 70 to 90 percent of the Department's total work force.

Prior to the commencement of the work stoppage, Department employees held union meetings during which they voiced demands for salary increases and other benefits and threatened to strike if these demands were not

met. Circulars outlining plans for the January 20 strike were distributed to employees present at the meetings. During the strike, the striking officers picketed the corrections complex and attended meetings at Operation P.U.S.H. headquarters. On January 26, the Department obtained an order from the circuit court ordering the striking officers to return to work within 24 hours. On January 27, mailgrams were sent to all absent officers ordering them to return to work by January 29. The officers began returning to work on January 30.

Complaints against 18 of the striking officers were filed with the Police and Corrections Merit Board on February 14, 1980. Evidentiary hearings began on February 27, and continued until August 11, 1980.

At the conclusion of the hearings, the Merit Board discharged plaintiffs Jones,

Brown, Morris, Garnett, White and Maggette, suspended and demoted plaintiffs Smith, Murphy and Bailey, and suspended plaintiffs Burnett, Muhammed, Williams, Bradley, O'Carroll, Spears and Leonard. These 16 plaintiffs filed complaints for administrative review. On July 12, 1982, the circuit court reversed and remanded these cases to the Merit Board for more detailed findings of fact. Upon remand, the Board entered additional findings of fact and orders as to each of the plaintiffs. Plaintiffs again filed complaints for administrative review, and the circuit court reversed the Merit Board's findings and orders in all the cases. Defendants appeal.

Defendants first contend that the circuit court improperly considered evidence outside the record in reaching its decision to reverse the findings of the Merit Board. (See Ill.

Rev. Stat. 1981, ch. 110, par. 3-110.) Although it is unclear from defendants' argument exactly what evidence defendants complain of, it appears that they object to the court's consideration of the fact that 15 of the 34 officers suspended by the Department "were returned to duty with time off their jobs considered served."

Although plaintiffs have provided no citation to the administrative record showing that this evidence was in fact adduced during the administrative hearings, an examination of the testimony in the circuit court reveals that the fact that 15 of the suspended officers were returned to duty was noted by an assistant State's Attorney during his arguments. Defendants therefore will not now be heard to complain that the circuit court erroneously considered this fact in reaching its decision.

Defendants next contend that the circuit court improperly reversed the Merit Board's findings and orders on the basis of "selective prosecution in violation of the equal protection clause". It is well established that the conscious exercise of prosecutorial selectivity is not in itself a Federal constitutional violation. (People v. Lewis (1979), 73 Ill. App. 3d 361, 364, 386 N.E.2d 910.) The decision whether or not to prosecute may not, however, be based upon the constitutionally protected grounds of race, religion or the exercise of first amendment rights. (United States v. Falk (7th Cir. 1973), 479 F.2d 616.) It has been held, with regard to prosecutions for violations of the criminal law, that such prosecutions are presumed to have been undertaken in good faith. (479 F.2d 616, 620.) To overcome this

presumption, the burden is on the defendant to present sufficient facts to make out at least a prima facie case of improper discrimination. This requires that the defendant demonstrate first, that others similarly situated have not been prosecuted for conduct similar to that for which he was prosecuted, and secondly, that his selection was based upon an impermissible ground such as race, religion or the exercise of his first amendment rights to free speech. (United States v. Scott (9th Cir. 1975), 521 F.2d 1188, 1195.) These standards also apply to allegations that disciplinary action has been taken against a police officer as a result of selective discriminatory prosecution. McLean v. Rochford (N.D.Ill. 1975), 404 F.Supp. 191, 199.

In the instant case, plaintiffs are unable to make out a prima facie case of

improper discrimination. Although the record shows that only 34 of the approximately 970 striking officers were charged, we must presume that the suspension or discharge of all 970 officers, comprising some 70 percent of the Department's work force, would have debilitated the Department. Consequently, the Department could, in its discretion, choose not to attempt to discharge all of the participants in the strike. See Strobeck v. Illinois Civil Service Commission (1979), 70 Ill. App. 3d 772, 777-78, 388 N.E.2d 912.

Furthermore, there has been no proof that the selection of the 34 officers for disciplinary action was based on an impermissible ground. Plaintiffs contend that they were disciplined because they exercised their right to freedom of speech in the form of a strike and picket line. However, the

record does not support this contention. The record shows that plaintiffs were disciplined either for engaging in an illegal work stoppage, a legitimate ground for discipline, (Battle v. Illinois Civil Service Commission (1979), 78 Ill. App. 3d 828, 836, 396 N.E.2d 1321) or for being absent from work without proper medical justification. Because participation in an illegal work stoppage is not protected conduct under the first amendment, (Strobeck v. Illinois Civil Service Commission, (1979), 70 Ill. App. 3d 772, 778, 388 N.E. 2d 912) plaintiffs cannot be heard to object on first amendment grounds to disciplinary action taken against them as the result of their incitement of their co-workers to such action. In addition, plaintiffs' presence at labor meetings and on picket lines at times during which they had claimed medical

excuses for not reporting for work was properly considered as a basis for charging plaintiffs with being absent without proper medical justification. We therefore find that there was no basis for the circuit court's finding that defendants subjected plaintiffs to selective prosecution in violation of their constitutional rights. Cf. Meltzer and Sunstein, Public Employee Strikes, Executive Discretion, and The Air Traffic Controllers, 50 Chi.L.Rev. 731 (1983).

Defendants next contend that the circuit court erred in finding that plaintiffs were selectively punished in violation of the equal protection clause. Plaintiffs contend that the differing punishments imposed upon them denied them equal protection of the law. This contention is based upon the fact that, of the 16 plaintiffs, six were discharged, three were

demoted and suspended and seven were suspended. The question presented to this court is whether such differing treatment of officers who participate in a work stoppage can pass constitutional muster. This question was considered and answered in the affirmative in Strobeck v. Illinois Civil Service Commission (1979), 70 Ill. App. 3d 772, 388 N.E.2d 912, in which we noted that the right to public employment is not fundamental in an equal protection context. (70 Ill. App. 3d 772, 777-78.) It should also be noted that in the instant case the Department had just cause to discharge all 970 officers who engaged in the strike; however, only those found to have engaged in strike instigation were disciplined in order to deter future strikes. Such a classification of strikers has been upheld as rationally related to the fulfillment of

legitimate State purposes where, as in the instant case, plaintiffs' claim does not involve the consideration of any suspect classifications. (See Battle v. Illinois Civil Service Commission (1979), 78 Ill. App. 3d 828, 832-33, 396 N.E.2d 1321.) The evidence presented before the Merit Board regarding the different plaintiffs' actions during the strike, as well as their differing ranks and responsibilities within the Department, supports the imposition of different punishments upon them by the board. We therefore find that the circuit court erred in holding that the Merit Board's punishment of plaintiffs was unconstitutionally selective.

Defendants next contend that the circuit court was without jurisdiction to enter its second order reversing the Merit Board's findings because the court's first order

remanding the cause to the Merit Board was final. This contention is without merit.

It is well established that an order of the circuit court remanding a case to the Merit Board is interlocutory in nature and is not final. Rather, the board must act on the circuit court's order, and the circuit court must confirm such action. (Robinson v. Cook County Police and Corrections Merit Board (1981), 93 Ill. App. 3d 1051, 1052, 418 N.E.2d 170.) This is precisely what occurred in the instant case. The language of the circuit court's remand order purporting to make the order final is superfluous and does not alter the order's interlocutory status. 93 Ill. App. 3d 1051, 1052.

Plaintiffs raise several arguments in their briefs. Our analysis of these arguments is premised on the settled principle that, under the Administrative Review Act, the

findings and conclusions of the board on questions of fact are prima facie true and correct, (Ill. Rev. Stat. 1981, ch. 110, par. 3-110) and must be affirmed unless against the manifest weight of the evidence, Cybularz v. Quern (1981), 96 Ill. App. 3d 845, 849, 422 N.E.2d 123.

Plaintiff Maggette argues that he was improperly disciplined for matters which were not set forth in the charges filed against him. It is fundamental that an employee cannot be discharged for a violation with which he was not charged. (Batley v. Kendall County Sheriff's Dept. Merit Commission (1981), 99 Ill. App. 3d 622, 626, 425 N.E.2d 1201; Cartwright v. Illinois Civil Service Commission (1980), 80 Ill. App. 3d 787, 793, 356 N.E.2d 1079.) However, the only matter included in the Merit Board's findings against

plaintiff Maggette which was not included in the charges filed against him was his failure to stay at home while absent from work for medical reasons. An examination of the record shows that the remaining findings against Maggette were sufficient to support his discharge.

Plaintiff Maggette, along with plaintiffs Leonard and Spears, also contends that the Merit Board lost jurisdiction to order his suspension due to the failure of defendants to refile charges or to request a hearing on the previously filed charges within 30 days of plaintiff's initial suspension by the Department. (See Zurek v. Cook County Police and Corrections Merit Board (1976), 42 Ill. App. 3d 1044, 356 N.E.2d 1079.) However, the record shows that the charges were filed and hearings commenced within 30 days of January

29, 1980, the date plaintiffs were suspended by the Department pending proceedings before the Merit Board.

Plaintiffs Leonard and Spears also contend that the evidence against them was insufficient to support their suspensions. Our examination of the record, however, reveals that the board's findings were not contrary to the manifest weight of the evidence. See Strobeck v. Illinois Civil Service Commission (1979), 70 Ill. App. 3d 772, 777-78, 388 N.E.2d 912.

Plaintiff O'Carroll, along with plaintiffs Maggette, Leonard and Spears, contends that she was granted "amnesty" by virtue of a memorandum issued by Executive Director Hardiman and a letter issued by Sheriff Elrod to the effect that officers who returned to work by January 28, 1980, would

not be discharged. However, because plaintiffs did not in fact return to work until January 30, we will not consider this contention.

Plaintiff O'Carroll also argues that the Department's "stay at home" rule is unconstitutional. Her position is supported by Pienta v. Village of Schaumburg (7th Cir. 1983), 710 F.2d 1258. However, we find that the findings against O'Carroll are sufficient to support her suspension absent a finding that she violated the stay at home rule.

The remaining plaintiffs present three contentions of error on the part of the Merit Board. The first, entitled "Demotion nor Suspension Can Be Sustained in Decisions Based Upon Complaints and Proofs Wherein Constitutional Rights are Violated" [sic], is somewhat poorly worded, but appears to argue

that the work stoppage was not illegal and that there was no work stoppage. Plaintiffs also argue the rights of police officers to freedom of speech.

As we have stated above, it is apparent from the record that a work stoppage did in fact occur, and the law in Illinois is clear in stating that work stoppages by public employees are illegal and that participation in an illegal work stoppage is not protected conduct under the first amendment. (Strobeck v. Illinois Civil Service Commission (1979), 70 Ill. App. 3d 772, 778, 388 N.E.2d 912.) We therefore find plaintiffs' first contention to be without merit.

Plaintiffs next argue that the failure of the Merit Board to prohibit the admission into evidence of plaintiffs' time cards and the testimony of the Department's timekeeper was

reversible error. However, it is clear that the board's decision as to these plaintiffs would have been the same had this evidence been excluded. The only purpose of the evidence complained of was to prove that plaintiffs were absent from work during the strike. Because this fact is not contested, the admission of the timekeeper's records and testimony, even if error, was harmless.

Plaintiffs finally contend that the consolidation of their causes by the Merit Board was unlawful. Consolidation is favored by the courts of Illinois and is proper where, as here, the several cases involve an inquiry into the same event. (Lake County Forest Preserve Dist. v. Keefe (1977), 53 Ill. App. 3d 736, 739-40, 368 N.E.2d 1096.) "Consolidation of separate causes for trial is discretionary with the trial court and where

separate causes are of the same nature, arise from the same act or event, involve the same or like issues and depend largely upon the same evidence, consolidation is not an abuse of discretion." (Stone v. City of Belvidere (1976) 39 Ill. App. 3d 829, 833, 350 N.E.2d 526). We find that the consolidation of the plaintiffs' causes was not improper.

The record in the instant case contains no evidence that plaintiff Karl Davis filed a complaint for administrative review. Therefore, the circuit court should not have included him in its order reinstating plaintiffs with back pay.

The decision of the circuit court reversing the findings and orders of the Merit Board is reversed and the findings and orders of the Merit Board are reinstated.

Reversed.

83-2980
83-2981
83-3020 Consolidated

Dated at Chicago, Illinois, this 11th day of December, 1984.

Hartman, PJ., Stamos and Downing*, JJ.

*Justice Downing participated in the above-captioned case before the expiration of his term in office.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

| | |
|---|---|
| Elijah Maggette et. al., | ) Consolidated |
| | ) 83 L 50166 |
| Plaintiffs, | ) 80 L 23710 |
| | ) 83 L 50161 |
| -vs- | ) 80 L 25262 |
| | ) 83 L 50127 |
| Cook County Police and | ) 80 L 25428 |
| Correction Merit Board, and | ) 80 L 25460 |
| Richard J. Elrod, Sheriff of | ) 83 L 50121 |
| Cook County, Illinois, | ) 80 L 25500 |
| | ) |
| Defendants. | ) |

REPORT OF PROCEEDINGS had at the hearing of the above-entitled cause, before the Honorable JAMES C. MURRAY, Judge of said Court, on the 9th day of November, 1983, at the hour of 11:00 o'clock A.M.

PRESENT:

MR. RICHARD MCPARTLIN,
appeared for Elijah Maggette;

MR. RONALD SAMUELS,
appeared for Hardy Burnett, et. al.;

HON. RICHARD M. DALEY,
State's Attorney of Cook County, by
Mr. Leonard Foster,
Assistant State's Attorney,
appeared for the defendants.

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Gregory L. Armstrong
Official Court Reporter
Law Division
Circuit Court of Cook County

THE COURT: We will call the case of Elijah Magette; Hardy Burnett, et. al.

These cases, numbers 80 L 23710; 80 L 25262; 80 L 25428; 80 L 25460, and 80 L 25500 are all cases involving common issues of law and fact. They have been consolidated in this Court solely for the purposes of judicial economy. For that purpose the Court is treating all individual cases in this one opinion.

All cases involve an administrative review of decisions of the Cook County Police and Merit Board imposing discipinary action on all the respective plaintiffs from suspensions to outright discharges as a result of activities they allegedly engaged in during a 1980 work stoppage or strike by Cook County correctional employees.

The respective plaintiffs of the punishment imposed are Elijah Maggette, discharged; Hardy Burnett, suspended one hundred and

eighty days; Hubert Smith, suspended one hundred and eighty days; Carl Davis, suspended one hundred and eighty days. Quadra, that's -- Quadra Mohammed, one hundred eighty days; Arthur Jones, discharged; Percy Williams, suspended one hundred and eighty days; Bernard Murphy, reduced in rank and suspended one hundred and eighty days; Tommye, T-o-m-m-y-e, Brown, discharged; Clyde Bradley, suspended one hundred and eighty days; Philip Morris, discharged; Winfield Garnett, discharged; Thomas White, discharged; Adolphus Bailey, reduced in rank and suspended one hundred and eighty days; Franklin Leonard, suspended one hundred and eighty days; Alicia Spears, suspended one hundred and eighty days, and Elizabeth O'Carroll, suspended one hundred and eighty days.

The fact is the findings relating to these seventeen plaintiffs are almost all identical; to wit, that they remained ill at

nome despite the fact that they were seen at various locations. The plaintiffs employment with the Department of Corrections of Cook County ranges from twenty-two years downward.

The facts giving rise to this case are as follows: In the course of the winter of 1979 and 1980 the question arose before the County Board as to whether pay raises could be given security personnel at the Cook county jail. Although there was no collective bargaining agreement between the Cook County security personnel and the County in effect at the time, a number of organizations, including the Fraternal Order of Police and Operation Push acted on the employees behalf.

On January 16th, 1980 a hearing was attended by a large number of jail guards. On January 18th, 1980 Philip Hardiman, the Executive Director of the Cook County Department of Corrections issued a special order relating to a possible work stoppage.

The order was placed on the bulletin board and placed on counters where paychecks were distributed.

On January 20th, 1980 beginning with the 8:00 to 4:00 p.m. shift some eighty to ninety percent of the County's jail work force was absent. Many of the missing employees called in to request sick leave.

On January 22nd, 1980 the President of the County Board, the Sheriff and Executive Director met with persons purporting to represent the non-working employees. As a result of this meeting a letter was sent to Jessie Jackson, Director of Operation Push advising him that no disciplinary action would be taken against those employees who returned to work in a reasonable time.

On January 23rd, 1980 the Chancery Division of this Court through Judge Wosik issued an order that the non-working employees return to work. On January 26th, 1980 Sheriff

Elrod and Hardiman met with representatives of the non-working employees at the Operation Push headquarters that afternoon. Judge Wosik again ordered the employees back to work.

On January 26th after the second return to work order, the Sheriff sent mailgrams to all non-working employees stating that those not returning by January 29th, 1980 would face disciplinary action. Almost all the employees returned to work beginning with 4:00 p.m. to mid, to the midnight shift on January 30th, 1980.

Some of those reporting for work were advised that they had been suspended pending action by the Cook County Board Police and, -- Correction; Merit Board. Through out the period of the work stoppage employees who claimed to be sick and entitled to leave were seen attending meetings and picketing at various locations.

In any event, thirty-three employees of

tne, plus nine hundred jail guards who participated in the work stoppage, thirty-three were suspended, fifteen of those thirty-three suspended were returned to duty with time off their jobs, their job considered served. Charges were filed against the remaining eighteen. Administrative hearings were held as to the eighteen. After the hearing six of the eighteen were ordered discharged by the defendant Board. Three were ordered demoted and suspended for a hundred and eighty days, and nine were suspended for a hundred and eighty days.

As noted by the caption of this case, seventeen of the eighteen employees against whom sanctions were imposed sought administrative review, and in these cases they all seek a reversal of the administrative decision either with an order of reinstatement or back pay. After previous hearings on the matter, -- on July 12th, 1982 this Court reversed the cause to the defendant Merit

Board and remanded for further proceedings in accordance with an opinion it rendered. In its then opinion this Court noted the limited roll of the judiciary in view of an administrative agency's orders suspending or discharging a public employee.

In its then opinion this Court also pointed out the defects that it considered in the original proceedings that made it difficult if not impossible to judicially review the underlying decisions of suspension and discharge. They were, number one, the treatment of the plaintiffs as a group rather than individually to have any sufficiency in any of the underlying complaints to support a general finding of guilt, and finally, the failure of any of the underlying orders to contain adequate findings of fact to support the ultimate orders of discharge or suspension.

After the Court's July 12th, 1983

reversal and remandment, the defendant Merit Board took the matter up again. However, they did not take the matter up until September 13th, 1982, some sixty-three days subsequent to this Court's July 12th, 1982 order of reversal and remandment. By this Court's July 12th, 1982 order of reversal and remandment, the defendants should have either appealed this Court's ruling within thirty days as was their right. And under that order, or obtain a stay order or reinstate, reinstate the plaintiffs pending further hearings.

The defendant did not take any of these procedural requirements. But the Board, the defendant Board did on September 13th, 1982 hold a hearing over the objection of at least one of the plaintiffs. The defendant Board treated the remanded matter as a consolidated case and suggested that all this Court did by its July 12th, 1982 reversal and remandment was to remand the matter back for the purpose of making findings of fact.

The Board at its September 13th, 1982 hearing suggested that counsel for the parties submit proposed findings. All of the plaintiffs declined to submit proposed findings at the September 13th, 1982 hearing. The State's attorney did submit findings of fact which the Board, which were adopted by the defendant Board.

The defendant Board entered its own order adopting the findings of fact of the State's attorney on December 13th, 1982. All of the plaintiffs returned to this Court rebriefing and rearguing their cases through their excellent counsel, including the Board's through the State's attorney.

This Court based on the following case law must again reverse the decision of the Cook County Police Board and Correction, -- correction; The Police and Correction Merit Board imposing sanctions ranging from discharge, reduction in rank and suspension

for a hundred and eighty days. It must do so for a variety of reasons.

First: This Court is well aware of its limitations in the review of the decision of administrative agency, particularly in the area of imposing the sanctions of the motion; discharge or suspension of public employees for misconduct in their public employment.

The Court's jurisdiction in such cases is limited to a determination of whether the administrative decision is supported by adequate findings of fact, and if so whether the findings are supported by the manifest weight of the evidence. In other words, the Court must determine whether the agency proceeded in its discharge proceedings in accordance with law, respecting the statutory and constitutional rights of the employees.

If the Court finds that the agency has complied with these substantive and procedural requirements and that some discipline was

warranted, the Court must then determine whether the extreme sanction of discharge is proper under the circumstances of the case. Department of Mental Disability vs. Civil Service, 1981 case; 85 Illinois 2nd 547. In this case, involving seventeen County Correctional employees who reported sick or otherwise failed to return to work during a work stoppage involving working conditions and offer of amnesty if the employees returned to work in a reasonable time, the Court must conclude that the defendant agency failed to proceed according to law.

Nothing in the record originally and on the second review indicates a rational basis or finding why the seventeen employee plaintiffs should be selected for discipline from among the nine hundred County jail work force that engaged in the job action. Nothing in the record discloses why the seventeen plaintiffs were picked for discipline from the t[illegible] originally selected.

Further, when this Court reversed and remanded the cause to the agency, the defendant agency instead of obtaining a stay of this Court's order pending its review of this Court's opinion and order of remandment, and -- reexamining the complaint and the findings, the Board merely adopted findings submitted by the State's attorney. The defendant board did not even address itself to the question of selective prosecution. Apparent in the record, or in light of the recent Supreme Court's decision relating to cause, whether the alleged wrongful acts of principally feigning sickness warranted the extreme penalty of discharge, reduction in rank and suspension for a hundred and eighty days this Court must reiterate its statement originally made in its first opinion, that the engagement by the plaintiffs in an unlawful work stoppage or strike would be cause for this discharge or suspension. However, once

having decided not to discharge all nine hundred of the employees and offer, -- in offering and giving some amnesty the defendant, whereby Federal constitutional requirements, to use a rational basis for the imposition of this discipline; that must in this Court's judgment appear in the record, in the findings or the record.

A case specifically on point is Olshack, O-l-s-h-a-c-k, -vs- Skokie, 541 Fed. 2nd, 1254. In that case, which was a case of a work stoppage of Skokie police officers of fifty-four of the officers who were disciplined, thirty-four were discharged and twenty suspended. The only discernable pattern of treatment was that thirty-four who were discharged appeared with an attorney and the twenty suspended appeared without an attorney. The Circuit Court of Appeals held that the defendant Board in that case violated both Illinois law and the Equal Protection Clause

of the Fourteenth Amendment in a wholly arbitrary manner in purporting to distinguish between suspension and discharge. Actually, the Court said they were distinguishing between the employing or not employing of counsel.

The instant case in this Court's mind there is even a more serious case of arbitrary action that would, than is present in the Olshack. Here there is not only no basis in the record to indicate why these seventeen plaintiffs were selected for disciplinary action from the, some nine hundred participants in the strike or work stoppage, nor why the seventeen plaintiffs were selected for discharge, demotion and or suspension from the thirty-three originally targeted for discharge action.

Finally, even among the seventeen plaintiffs there appears no basis in the record as to why plaintiffs, -- for example,

plaintiffs Maggette, Jones, Brown and Morris, Garnett and White were given the extreme penalty of discharge and others suspended for, apparently, the same conduct, i.e., failing to remain at home during a period they claim to have been ill; nor is there any basis in the record as to why Murphy and Bailey were to be reduced in rank and given suspensions for conduct similar to that of plaintiffs suspended.

Able counsel for the various parties have in their briefs and oral arguments raised other serious questions as to the validity of the suspension and reduction in rank and discharge orders in their individual cases.

However, since there is a common defect in all the seventeen cases the Court does not feel that it will address those questions based upon the case of Olshack vs. The Village of Skokie, 541 Fed. 2nd 1254, a 1976 case. And the reason is heretofore enunciated herein.

opportunity to appeal and obtain a further stay from the Appellate Court. That will be my order.

MR. FOSTER: Thank you, your Honor.

MR. SAMUELS: Thank you.

THE COURT: Prepare your order. Why don't you type the order out.

MR. SAMUELS: My I address the Court on this matter; in the -- as counsel in the decision that you have rendered you made direct relationship to Lieutenant Bailey and Sergeant Murphy. Sergeant Smith was also reduced in rank, --

THE COURT: Let's make a direct quote for Sergeant Smith that he be returned to work.

MR. SAMUELS: And restored to his rank?

THE COURT: And restored to his rank. I didn't realize that I had overlooked that. And express my apologies for overlooking, -- he's too big.

MR. SAMUELS: He's too big to be overlooked. Thank you, your Honor.

(Which were all the proceedings had in the above-entitled cause.)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - LAW DIVISION

I, Gregory L. Armstrong, an Official Court Reporter for the Circuit Court of Cook County, County Department-Law Division, do hereby certify that I reported in stenotype the proceedings had at the hearing of the aforementioned cause; that I thereafter caused the foregoing to be transcribed into typewriting, which I hereby certify to be a true and accurate transcript of the proceedings had before the Honorable JAMES C. MURRAY, Judge of said Court.

_____
Official Court Reporter

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, LAW DIVISION

| | | |
|---|---|---|
| PHILIP MORRIS<br><br>Plaintiff,<br><br>vs.<br><br>COOK COUNTY POLICE AND CORRECTIONS MERIT BOARD, et. al.,<br><br>Defendants. | ) | No. 80 L 23710<br>83 L 50166<br>Consolidated |

JUDGMENT ORDER

This cause coming on for further hearing and disposition under the Administrative Review Law; and the Court having considered the Original and Supplemental Record of Proceedings, and the memoranda submitted by counsel for the respective parties; and having heard oral arguments and now being fully advised in the premises,

It is ordered that the Order of the Defendant, Merit Board entered December 13, 1982 (erroneously dated 1980), whereby it was ordered and adjudged that Plaintiff, Philip

Morris was guilty of the charges in the Sheriff's complaint filed with the Merit Board, and was separated from the Department of Corrections, be and the same is hereby reversed and set aside.

It is further ordered that this case is remanded to the Defendant, Merit Bord with instructions to reinstate Plaintiff, Philip Morris to his position as Correctional Officer in the Cook County Department of Corrections as of February 14, 1980 and to determine the amount of back salary due him from that date, to which he is entitled, to the end that he may be paid said amount and give full credit for seniority, longevity, pension and all other purposes from said date.

It is further ordered that Plaintiff have and recover costs from Defendants' in the sum of $144.50.

It is further ordered that enforcement of this order is stayed for 30 days.

This order is entered pursuant to Opinion of the Court rendered November 9, 1983.

ENTER: _____
JUDGE

Dated November _____, 1983

STATE OF ILLINOIS )
) SS
COUNTY OF C O O K )

COOK COUNTY POLICE AND CORRECTIONS
MERIT BOARD, COOK COUNTY, ILLINOIS

IN THE MATTER OF:

Phillip Morris )
) Docket No. 245
Correctional Officer)

O R D E R

WHEREAS this above entitled cause coming up in conformance and compliance with the remand order of the Honorable Judge James C. Murray and

WHEREAS the Merit Board did request and direct that counsel of the respective parties submit proposed findings of fact which would conform to the evidence presented at the subject's prior hearing and

WHEREAS the Merit Board, having given due consideration to all proposed finding of facts submitted and after having reviewed the record of the proceedings and the exhibits presented,

NOW THEREFORE, the Merit Board, being fully advised in the premises does hereby make findings of fact as follows:

1. That the respondent was absent from his assigned post and shiftfrom January 21, 1980 to January 29, 1980, in violation of Article VIII, Sections B(4) and B(13) of the Rules and Regulations of this Board and in violation of General Order No. 78-13, Section II(B)(6) of the Department of Corrections.

2. That the respondent acted in concert with others to jeopardize the security of the Institution, in violation of Article VIII, Section B(4) and (10) of the Rules and Regulations of this Board and in violation of General Order No. 78-13, Section B(5) and (12) of the Department of Corrections.

3. That the respondent failed to remain at home during a period of alleged illness, in violation of Article VIII, Section B(4) of the Rules and Regulations of this Board and in violation of General Order No. 78-11, Section VI(E)(2) of the Department of Corrections.

4. That the respondent failed to furnish a doctor's verification of alleged illness, in violation of Article VIII, Section B(4) of the Rules and Regulations of this Board, and in violation of General Order No. 78-11, Section VI(E)(4), and the Emergency Procedures Memorandum dated January 18, 1980, paragraph 4, of the Department of Corrections.

5. That the respondent failed to carry out his supervisory responsibilities, in violation of Article VIII, Section B(4), (7),

(8) and (10) of the Rules and Regulations of this Board and in violation of General Order No. 78-13, Section B(11) (12) and (14) of the Department of Corrections.

6. That the respondent failed to return to work as ordered by the Circuit Court of Cook County, in violation of Article VIII, Section B(7) of the Rules and Regulations of this Board and in violation of General Order No. 78-13, Section B(11) of the Department of Corrections.

7. That the respondent failed to report to his assigned post and shift on January 29, 1980, as ordered by mailgram, in violation of Article VIII, Section B(7) and in violation of General Order 78-13, Section B(11) of the Department of Corrections.

Based upon the above findings of fact, IT IS HEREBY FOUND, ORDERED AND ADJUDGED that Phillip Morris is guilty of the charges in the Sheriff's complaint filed with the Merit Board and is hereby separated from the Department of Corrections.

/s/
Samuel W. Nolan

/s/
Robert A. Novelle

/s/
E. James Garbutt

Dated this 13th day of December, 1982

COOK COUNTY DEPARTMENT OF CORRECTIONS

January 31, 1980

Arthur L. Jones
10019 South Forest
Chicago, Illinois 60628

Dear Chief Jones:

You are hereby suspended for a period of twenty-nine (29) days, pending your hearing before the Cook County Police and Corrections Merit Board. Your suspension shall commence 1 February 1980.

The charges include but not limited to violation of General Order 78-3, paragraph III, 78-11, Section C and General Order 78-13, Section B, number II.

The Merit Board shall contact you in the near future regarding your hearing date. If there are any questions regarding this matter, please contact Mr. E. Herben, Cook County Police and Corrections Merit Board, 443-7938.

Yours truly,

Phillip T. Hardiman

State of Illinois

County of Cook

Cook County Sheriff

Cook County Department of Corrections

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Arthur L. Jones, | ) | Cook County Merit Bd. |
| | ) | |
| | ) | Docket # 238 |
| | ) | |
| Correctional Officer. | ) | |

Complaint

Richard J. Elrod, Sheriff of Cook County, Illinois. Pursuant to the Ill. Revised Statutes, 1975, as amended, Chapter 125, entitled Sheriffs, Herein complains of, and against, Correctional Officer Arthur L. Jones, (Date of Birth, Nov. 6, 1932; Social Security Number 350-22-4983; and Home Address, 10019 Forest, Chicago, Illinois 60628) for the reasons described as follows:

COUNT I

1. That the said Correctional Officer Arthur L. Jones participated in an illegal work stoppage at Cook County Department of Corrections from January 20, 1980 in violation of the Rules and

Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 1.

2. That the said Correctional Officer Arthur L. Jones by his conduct, as aforesaid, did engage in conduct unbecoming to an employee of the Cook County Department of Corrections or which tended to reflect discredit on the Cook County Department of Corrections in violation of the Rules and Regulations of the Cook County Police and Correctional Merit Board effective December 1, 1975, Article III, Section B, Paragraph 11.

3. That the said Correctional Officer Arthur L. Jones by his conduct in concert, directly or indirectly, with fellow Correctional Officer, to wit, disobedience of Executive Director Phillip T. Hardiman's Emergency Procedures effective January 18, 1980 to January 31, 1980, created and/or contributed to disorder and/or a potential for disruption of security and discipline within the Department of Corrections in violation of Cook County Department of Corrections General

Order 78-13, effective March 1, 1978, Article II, Section B, Paragraph 11, 12, and 14, said violations constituting a violation of Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 4.

COUNT II

1. That the official records of the Cook County Department of Corrections indicate that the said Correctional Officer Arthur L. Jones has been recorded absent, no call, and/or sick (without medical proof), from January 20, 1980 to January 29, 1980.

2. That the said Correctional Officer Arthur L. Jones has thereby been absent without leave or appropriate permission in violation of one or more of the following General and Special Orders:

a) Cook County Department of Corrections General Order 78-13, effective March 1, 1978, Article II, Section B, Paragraph 14;

b) Cook County General Order 78-11, effective March 1, 1978, Article VI, Section A and/or E; and

c) Cook County Special Order, effective January 18, 1980 to January 31, issued by Phillip T. Hardiman, Executive Director, Cook County Department of Corrections said violation constituting a violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board effective December 1, 1975, Article III, Section B, Paragraph 4.

3. That the said Correctional Officer Arthur L. Jones has thereby been absent without leave or appropriate permission in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 13.

COUNT III

1. That the said Correctional Officer Arthur L. Jones failed to obey one or more of the following lawful orders:

a) The Temporary Restraining Order issued by the Honorable Joseph M. Wosik, Judge of the Circuit Court of Cook County, on January 23, 1980 in the case of Richard J. Elrod, et al v. Thomas

White et al, Case No. 80 CH 518;

b) The Enforcement Order of January 24, 1980 issued by the Honorable Joseph M. Wosik, mandating compliance with the Temporary Restraining Order of January 23, 1980 in Case No. 80 CH 518;

c) The Enforcement Orders of January 25 and 26 1980, again mandating compliance with the TRO of January 23, 1980 in Case No. 80 CH 518;

d) Cook County Department of Corrections General Order 78-13, effective March 1, 1978, Article VI, Section A and/or E;

f) Cook County Special Order effective January 18, 1980 to January 31, 1980, issued by Phillip T. Hardiman, Executive Director, Cook County Department of Corrections in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 11.

COUNT IV

1. That the said Correctional Officer Arthur L. Jones neglected to perform assigned duties

from January 20, to January 29, 1980, to wit failed to report to work, in violaiton of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 10.

COUNT V

1. That the said Correctional Officer Arthur L. Jones disseminated or released information concerning essential correctional matters without proper authorization to the Chicago Defender on January 23, 1980 in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 22.

Wherefore, Richard J. Elrod, Sheriff of Cook County, Illinois, respectfully requests that the Cook County Police and Corrections Merit Board shall hold a hearing on the charges set forth in this complaint. That upon proof of said charges, or any part thereof the Cook County Police and Corrections Merit Board shall make a finding of guilty and order that said Correc-

tional Officer Arthur L. Jones be removed as an employee of the Cook County Department of Corrections.

Richard J. Elrod, Sheriff

MEMORANDUM

To: All Personnel

From: Executive Director Phillip T. Hardiman

Subject: The County Proposal To Correctional Officers

Please read at all roll calls and post in all divisions

There has been much discussion about what agreement was reached regarding fringe benefits, and some confusion as to what was granted.

Attached are letters from President George Dunne and Sheriff Richard Elrod regarding those benefits.

In Sheriff Elrod's Letter, the reasonable length of time mentioned in points 2 and 3 was up to and including 29 January 1980; all Officers who did not return by this deadline will be charged before the Cook County Police and Corrections Merit Board.

In a memo issued from this office 30 January 1980, it was mistakenly reported that only thirty-one

Officers were suspended; in fact, thirty-three Officers were suspended. The thirty-fourth person is a senior member of the staff that holds an exempt position, and is not included in this number.

In addition, any Officer that has been off continuously since 20 January 1980, and has not returned to work by Monday, 4 February 1980 will be suspended pending hearings.

I would like to take this opportunity to assure all members of the Department that there will be no "witch hunt", and no other Officers shall be suspended (unless as a result of action by the Merit Board) for any incident regarding the work stoppage.

If any Officer has any additional questions regarding this matter feel free to contact my office.

Signature: P. Hardiman

STATE OF ILLINOIS

COUNTY OF COOK

COOK COUNTY SHERIFF

COOK COUNTY DEPARTMENT OF CORRECTIONS

| | |
|---|---|
| IN THE MATTER OF | )COOK COUNTY |
| | ) |
| PHILIP MORRIS, | )MERIT BOARD |
| | ) |
| CORRECTIONAL OFFICER. | )DOCKET # 245. |

COMPLAINT

Richard J. Elrod, Sheriff of Cook County, Illinois. Pursuant to the Illinois Revised Statutes, 1975, as amended, Chapter 125, entitled Sheriffs, Herein complains of, and against Correctional Officer Philip Morris, (Date of Birth, December 31, 1942; Social Security Number 346-34-2803; and Home Address, 15308 South California, Markham, Illinois 60426) for the reasons described as follows:

COUNT I

1. That the said Correctional Officer Philip Morris participated in an illegal work stoppage at Cook County Department of Corrections from

January 20, 1980 in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 1.

2. That the said Correctional Officer Philip Morris by his conduct, as aforesaid, did engage in conduct unbecoming to an employee of the Cook County Department of Corrections or which tended to reflect discredit on the Cook County Department of Corrections in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board effective December 1, 1975, Article III, Section B, Paragraph 11.

3. That the said Correctional Officer Philip Morris by his conduct in concert, directly or indirectly, with fellow Correctional Officer, to wit, disobedience of Executive Director Phillip T. Hardiman's Emergency Procedures effective January 18, 1980 to January 31, 1980, created and/or contributed to disorder and/or a potential for disruption of security and discipline within the Department of Corrections in violation of

Cook County Department of Corrections General Order 78-13, effective March 1, 1978, Article II, Section B, Paragraph 11, 12, and 14, said violations constituting a violation of Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 4.

COUNT II

1. That the official records of the Cook County Department of Corrections indicate that the said Correctional Officer Philip Morris has been recorded absent, no call, and/or sick (without medical proof), from January 20, 1980 to January 29, 1980.

2. That the said Correctional Officer Philip Morris has thereby been absent without leave or appropriate permission in violation of one or more of the following General and Special Orders:

a) Cook County Department of Corrections General Order 78-13, effective March 1, 1978, Article II, Section B, Paragraph 14;

b) Cook County Department of Corrections

General Order 78-11, effective March 1, 1978, Article VI, Section A and/or E; and

c) Cook County Special Order, effective January 18, 1980 to January 31, issued by Phillip T. Hardiman, Executive Director, Cook County Department of Corrections said violation constituting a violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 4.

3. That the said Correctional Officer Philip Morris has thereby been absent without leave or appropriate permission in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 13.

COUNT III

1. That the said Correctional Officer Philip Morris failed to obey one or more of the following lawful orders:

a) The Temporary Restraining Order issued by the Honorable Joseph M. Wosik, Judge of the

Circuit Court Of Cook County, on January 23, 1980 in the case of Richard J. Elrod, et al v. Thomas White et al, Case No. 80 CH 518;

b) The Enforcement Order of January 24, 1980 issued by the Honorable Joseph M. Wosik, mandating compliance with the Temporary Restraining Order of January 23, 1980 in Case No. 80 CH 518;

c) The Enforcement Orders of January 25 and 26, 1980, again mandating compliance with the TRO of January 23, 1980 in Case No. 80 CH 518;

d) Cook County Department of Corrections General Order 78-13, effective March 1, 1978, Article II, Section B, Paragraph 14;

e) Cook County Department of Corrections General Order 78-11, effective March 1, 1978, Article VI, Section A and/or E;

f) Cook County Special Order, effective January 18, 1980 to January 31, 1980, issued by Phillip T. Hardiman, Executive Director, Cook County Department of Corrections in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective

December 1, 1975, Article III, Section B, Paragraph 7.

2. That said Correctional Officer Philip Morris engaged in conduct unbecoming an employee of the Cook County Department of Corrections or which tended to reflect discredit on the Department of Corrections, to wit failed to obey the afformentioned lawful court orders, in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 11.

COUNT IV

1. That the said Correctional Officer Philip Morris neglected to perform assigned duties from January 20, to January 29, 1980, to wit failed to report to work, in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 10.

COUNT V

1. That the said Correctional Officer Philip

Morris committed obstruction of process in that he at or about 6pm to 9pm on January 23, 1980 at 930 E. 50th Street, Chicago, Illinois, "Operation Push" Headquarters, knowingly resisted and/or obstructed the authorized service or execution of civil process by Cook County Department Sheriffs Frank Early and Ray Cobble in the case of Richard J. Elrod, et al v. Thomas White, et al, Case No. 80 CH 518 in violation of Ill. Rev. Stat. 1977, ch. 38, ss31-3, a Class B misdemeanor.

2. That the said Correctional Officer Philip Morris committed the offense of battery in that he knowingly and without legal justification made physical contact of an insulting or provoking nature with an individual, to wit, pushed Cook County Department of Corrections Investigator Harris J. Brown toward the door of Operation Push at 930 E. 50th Street, Chicago, Illinois at or about 6pm to 9pm on January 23, 1980, while said Investigator Brown was assisting Cook County Department Sheriffs Frank Early and Ray Cobble in the service of process in Richard J. Elrod

et al v. Thomas White et al, Case No. 80 CH 518, in violation of Ill. Rev. Stat. 1977, ch. 38, ss12-3, a Class A misdemeanor.

3. That the said Correctional Officer Philip Morris violated criminal statutes of the State of Illinois in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 1.

4. That the said Correctional Officer Philip Morris violated criminal statutes of the State of Illinois, misdemeanors, in violation of Cook County Department of Corrections General Order 78-13, effective March 1, 1978, Article II, Section B, Paragraph 1, in further violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 4.

5. That the said Correctional Officer Philip Morris by his conduct, as aforesaid, did engage in conduct unbecoming to the Cook County Department of Corrections or which tended to reflect

discredit on the Department of Corrections in violation of the Rules and Regulations of the Cook County Police and Corrections Merit Board, effective December 1, 1975, Article III, Section B, Paragraph 11.

Wherefore, Richard J. Elrod, Sheriff of Cook County, Illinois, respectfully requests that the Cook County Policy and Corrections Merit Board shall hold a hearing on the charges set forth in this Complaint. That upon proof of said charges, or any part thereof, the Cook County Police and Corrections Merit Board shall make a finding of Guilty and order that the said Correctional Officer Philip Morris be removed as an employee of the Cook County Department of Corrections.

Richard J. Elrod

COOK COUNTY DEPARTMENT OF CORRECTIONS

January 28, 1980

Dear Officer Phillip Morris:

You were directed to report to work no later than the start of your shift, Tuesday, 29 January 1980. Department of Corrections records indicate that you failed to report, therefore, you are suspended for a period of twenty-nine (29) days pending your hearing for termination. You are charged with violation of General Order 78-13, Sub-Section B, Number 14.

You are reminded that you are de-deputized effective 30 January 1980, and are directed to immediately turn in your CTA pass, deputy card, gun card, badge and Department identification at the Sheriff's personnel office between 9:00 A.M. and 5:00 P.M., Room 702, Daley Center.

If you have any questions regarding this matter contact the Cook County Police and Corrections Merit Board at 443-7938.

Sincerely,

Phillip T. Hardiman
Executive Director

Supreme Court, U.S.
FILED
OCT 10 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-176

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1987

**THOMAS WHITE, et al.,**

*Petitioners,*

v.

**RICHARD ELROD and PHILLIP HARDIMAN,**

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION

RICHARD M. DALEY
State's Attorney of Cook County
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 443-5475
*Attorney for Respondents*

IRIS E. SHOLDER *
DIANE KRISTEN
Assistant State's Attorneys
*Of Counsel*

* Counsel of Record

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

## QUESTIONS PRESENTED

I. Whether the lay Petitioner may represent the interests of persons other than himself in a *pro se* petition for writ of certiorari.

II. Whether Petitioner has failed to allege appropriate grounds to invoke the jurisdiction of the Court pursuant to 28 U.S.C. §1254(1), where the United States Court of Appeals determination that a prior and final determination by the Illinois State Courts barred Petitioner's civil rights suit involving identical parties and causes of action was consistent with 28 U.S.C. §1738.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1987

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**THOMAS WHITE, et al.,**

*Petitioners,*

v.

**RICHARD ELROD and PHILLIP HARDIMAN,**

*Respondents.*

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**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION

### STATEMENT OF THE CASE

This case involves the determination by the United States Court of Appeals for the Seventh Circuit that claims filed in the federal court alleging selective prosecution, race discrimination and free speech infringement, which were previously adjudicated in the state courts of Illinois (Pet. App. C-11, D-33), are barred by the principle of *res judicata.* (Pet. App. A-5) In 1980, 85% of the guards of the Cook County Department of Corrections in Chicago, Illinois, participated in an illegal strike. (Pet.

App. A-i) Due to that strike, 5000 inmates were inadequately guarded for 10 days. (Pet. App. A-2)

Because it was infeasible to discipline all 900 guards involved, Respondents suspended and filed charges with the Cook County Police and Corrections Merit Review Board against only 34 guards who were believed to have organized or exacerbated the illegal strike. (Pet. App. A-2 - 3) Charges were filed against Philip Morris and each of the other persons identified in the petition as "Parties Involved". (Pet. A-ii) Certain guards who were disciplined appealed the decision of the Merit Board to the Circuit Court of Appeals. (Pet. App. B-9cc) Meanwhile, the same guards also filed a civil rights suit under 42 U.S.C. §1983, involving the same facts at issue in the state court action. (Pet. App. B-9ee) Ultimately, the Illinois Appellate Court found that the disciplinary actions were just and lawful (Pet. App. C-11), and both the District Court and the United States Court of Appeals determined that the civil rights suit was barred by the principle of *res judicata.* Moreover, the District Court found no evidence of race discrimination. (Pet. App. B-90) The Court of Appeals upheld that finding as to two guards who had been reinstated with full back pay and whose claims therefore were not barred by *res judicata.* (Pet. App. A-8d) The petition seeks to invoke the discriminatory jurisdiction of the Court to review these determinations.

For the sake of brevity, Respondents adopt the more complete statement of the case and the presentation of the facts set forth in the opinion of the United States Court of Appeals for the Seventh Circuit. (Pet. App. A-1 - 4)

## SUMMARY OF ARGUMENT

Philip Morris' *pro se* Petition for Writ of Certiorari must be deemed to advance only the interests of Philip Morris and not the interests of 21 other purported petitioners who have no right to representation by lay counsel. Philip Morris' attempt to represent the claims of persons other than himself constitutes unauthorized practice of law.

The petition of Philip Morris raises no substantial federal question. The decision of the United States Court of Appeals for the Seventh Circuit conforms with long-standing precedent regarding the full faith and credit accorded by federal courts to final determinations by the courts of the state. The purely factual issues raised in the petition are improper subjects for review under writ of certiorari.

## ARGUMENT

### I.

### ONLY THE PETITION OF PHILIP MORRIS IS PROPERLY BEFORE THE COURT.

Petitioner Philip Morris, on behalf of himself and allegedly for 21 other lay persons named in the petition, seeks review of the decision of the United States Court of Appeals for the Seventh Circuit to accord full faith and credit to the final judgment of the Courts of the State of Illinois in a case involving parties and issues identical to those presented in federal court. For the reasons set forth below, the petition represents only the interests of Philip Morris and fails to present a substantial federal question warranting a writ of certiorari.

In all courts of the United States, parties may plead and conduct their own cases personally. 28 U.S.C. §1654. The right to self-representation however, does not include the right to be represented by lay counsel. *Osborn v. United States Bank*, 22 U.S. 738, 828 (1824) (the interests of a corporation must be represented by counsel in order to ensure the fair administration of justice); *Pilla v. American Bar Association*, 542 F.2d 56 (8th Cir. 1976) (litigants in civil and criminal cases do not have a right to be represented by lay counsel); *Phillips v. Tobin*, 548 F.2d 408 (2nd Cir. 1976) (stockholders must proceed with counsel in a derivative action against the corporation); *Oxendine v. Williams*, 509 F.2d 1405 (4th Cir. 1975) (a prisoner cannot proceed *pro se* on behalf of a class of inmates because the competence of a layman is too limited to risk the rights of the class); *Move Organization v. United States Department of Justice*, 555 F.Supp. 684 (E.D. Penn. 1983) (in order to protect the fair administration of justice, an organization which filed a claim against federal and state correctional authorities could not proceed *pro se*.)

Petitioner Philip Morris has filed a *pro se* petition for writ of certiorari which purports to represent the interests of himself and 21 other lay individuals each of whom was the subject of a disciplinary prosecution based upon alleged participation in an illegal strike among correctional officers at the Cook County Department of Corrections in Illinois. Admission to practice before the Supreme Court requires, in part, proof of admission to the highest court of a state for at least three years. Supreme Court Rule 5. Philip Morris is not authorized to practice law in any jurisdiction. Unauthorized practice in a federal court in violation of the rules of the court, constitutes misbehavior tending to obstruct the administration of justice and is punishable by contempt. *United States v. Peterson*, 550 F.2d 379, 384 (7th Cir. 1979).

The individuals named in the petition, aside from Philip Morris, have no right to lay representation and therefore their claims should not be considered.[1] Only the petition on behalf of Philip Morris is properly before the Court.

## II.

## PETITIONER HAS FAILED TO ALLEGE APPROPRIATE GROUNDS TO INVOKE THE JURISDICTION OF THE COURT PURSUANT TO 28 U.S.C. §1254(1).

The petition raises no substantial federal question. As noted in Section I above, only Philip Morris has filed a proper timely *pro se* petition for writ of certiorari. However, even if the Court were to consider the claims not only of Philip Morris but also of the other lay persons purportedly advanced in the petition, each has failed to allege any basis sufficient to invoke the discretionary jurisdiction of the Court.

A writ of certiorari is not a matter of right. *Fay v. Noia*, 372 U.S. 391, 436 (1963). Discretionary jurisdiction to review cases from the circuit court was conferred upon the Supreme Court in order to secure uniformity of law between the circuits and to review important questions affecting the public interest. *Magnum Import Company v. Coty*, 262 U.S. 159 (1923). Certiorari is inappropriate in cases involving only the interests of the parties. *NLRB v. Pittsburgh S.S. Company*, 340 U.S. 498, 502 (1951).

Petitioner does not assert that the decision of the Seventh Circuit is in conflict with those of the other circuits or

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[1] Each individual named in the petition, excluding Philip Morris has failed to petition for writ of certiorari within 60 days of the entry of the judgment of the United States Court of Appeals and therefore each is time barred from petitioning for certiorari review. (Supreme Court Rule 20.1)

that the decision affects principles important to the public interest. Indeed, neither basis for the exercise of the Court's discretionary jurisdiction exists in the instant matter.

The Seventh Circuit followed well-established precedent in determining that the Illinois doctrine of *res judicata* applied to petitioner's federal suit and that under that doctrine petitioner's claim pursuant to 42 U.S.C. §1983 was barred. Federal courts must give full faith and credit to the decisions of the states' courts. 28 U.S.C. §1738. Actions pursuant to 42 U.S.C. §1983 are subject to the preclusion rules which may bar federal courts from freshly deciding constitutional issues previously litigated in state courts. *Allen v. McCurry*, 449 U.S. 90, 98 (1980). Moreover, federal courts must give the same preclusive effect to a state court judgment that the judgment would be given in the courts of the state from which the judgment emerged. *Kremer v. Chemical Construction Corporation*, 456 U.S. 461, *rehearing denied*, 458 U.S. 1133 (1982).

Under Illinois law, the doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. *Spiller v. Continental Tube Company*, 95 Ill.2d 423 (1983). As noted in the opinions of the District Court for the Northern District of Illinois and the United States Court of Appeals for the Seventh Circuit (Pet. App. B-9ee and Pet. App. A-86), Petitioner's state and federal suits involved the identical parties and causes of action, arising out of the same core of operative facts. Consequently, the Illinois doctrine of *res judicata* barred Petitioner's federal suit. *Id.*

The Seventh Circuit also determined that the Illinois doctrine of *res judicata* did not bar the civil rights claims of two officers who had prevailed before the Merit Board and were reinstated with full back pay because their victory at the Merit Board level precluded review and final adjudication of their claims in the state courts. (Pet. App. A-6) The federal claims of those two officers, however, were found to be without merit. (Pet. App. A-4) As noted in Section I above, only the petition of Philip Morris is properly before the Court. However, even if the Court were to consider a petition for writ of certiorari on behalf of the two reinstated officers, the petition would fail.

The Seventh Circuit determined that the two officers who maintained federal claims which were not precluded, were not the subjects of unlawful selective prosecution. As the Court of Appeals noted, the prosecutor has the right to decide which charges to prosecute so long as the decision is not based upon unjustifiable standards. *Wayte v. United States*, ____ U.S. ____, 105 S.Ct. 1524, 1531 (1985). The Court of Appeals reviewed the record and concluded that the standards for selective prosecution were justifiable. (Pet. App. A-8f - 8h) That determination is not the proper subject of discretionary review. Certiorari is never granted to review evidence or consider issues of fact. *United States v. Johnson*, 268 U.S. 220 (1925). The additional charges of racial discrimination regarding the nature and extent of the discipline imposed raised in the petition of Philip Morris are, of course, moot as to the two officers who were reinstated with full back pay.

The petition advances only the claims of Philip Morris and fails to present any substantial federal question for review. The petition seeks also to disturb purely factual determinations and therefore fails to allege grounds sufficient to invoke the discretionary jurisdiction of the Court.

## CONCLUSION

WHEREFORE, Respondents respectfully request that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Supreme Court, U.S.
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(3)

No. 87-176

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

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Thomas White, Hardy Burnett, Franklin Leonard, Harold Hampton, David Morgan, Alicia Spears, Elizabeth O'Carroll, Reginald Powell, Karl Davis, Hubert Smith, Qaardir Muhammad, Arthur L. Jones, Percy Williams, Bernard Murphy, Tommye Brown, Beverly Pritchett, Clyde Bradley, Philip Morris, Adolphus Bailey, Dwight Woodruff,

Petitioners,

vs.

Richard J. Elrod, Sheriff of Cook County, Phillip T. Hardiman, Dir. Dept. of Corr.

Respondents.

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# REPLY BRIEF

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Pro-se Petitioners
Thomas White et, al.
c/o Philip Morris
148 East 118th St.
Chicago, Il. 60628
(312) 821-7329

15 pp

## Questions Presented

1. Whether the selective prosecution of the Black petitioners among 970 Correctional Deputy Sheriffs similarly situated was based on the exercise of first amendment rights of free speech, race or other arbitrary classification.

2. Whether the differences in punishments meted out to the 34 Correctional Deputy Sheriffs for essentially the same charges and findings violated equal protection of the law as stated in the fourteenth amendment.

3. Whether the petitioners were subject to unfair, unreasonable, cruel and unusual punishment in being suspended; or demoted and suspended; or out right discharged because of skin color, in violation of the eighth amendment.

4. Whether the judgement and affirmation by the United States District Court and the United States Court of Appeals were discriminatory against the petitioners because of race.

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## ARGUMENT
## I

The respondent attorneys show total disrespect for the United States Supreme Court by not giving a clear insight into this matter.

The respondents continue to avoid any discussion as to why Arthur L. Jones, who worked thru the Blu Flu incident, is charged with being a leader in the Blu Flu. This is a clear and undisputable demonstration of arbitrary, unjustified, irrational and inconsistant selection of Black COs for discipline in violation of federal and state equal protection constitution clauses and bad faith. Knowingly and intentionally discriminating against the plaintiffs while arguing in the brief in opposition at their statement of case (pg.2) "... file charges ... against only 34 guards ..."; Hardiman has reduced to writing over his personal signature in his memo to "All (correctional) Person-

nel," ..." ...in fact, thirty-three officers were suspended. The thirty-fourth person is a senior member of the staff ..., and is not included in this number." This fact in,reference to Arthur L. Jones, has been testified to,under oath, by both respondents Elrod and Hardiman along with 90% of the corrections administration staff, and such testimony has been ignored by all desision makers in this matter since the onset. The respondent attorny knows now as well as when the charges were placed that the charges against most of the plaintiffs were in error, incorrect and improper. With this knowledge, the respondent attorneys have knowingly and intentionally prosecuted innocent CCs and continues to do so. As an officer of the court, respondent attorney should advise the respondents of the irregularities and have whatever remedies needed installed. The Judges and Justices, seeing the respondent refusal to refrain from such contemptable behavior, should

have made such corrections. The Judges and Justices have ignored such testimony and written facts and aided in violation of constitutional rights of the plaintiffs on due process, equal rights, curel and unusual punishment, free speech and other fundamental rights. Jones worked; and all decision makers from the Merit Board thru the U.S. Court of Appeals knew Jones worked, and such decision makers have intentionally ruined Jones' career and livelyhood as they have done to the petioners herein named. The orders and decisions made by the United States Supreme Court have been totally disregarded by the Cook County officials and the Illinois Court system of Cook County area, in regards to constitutional rights of the petitioners. It can only be seen as an knowingly and intentionally wreckless display of meanness with a

complete abandonment of fundamental fairness because Jones is a dark skinned Black.

II

The respondents cannot display where any of the plaintiffs did anything any different from any of the over 900 Correctional Deputy Sheriffs who returned to work with no penalty, nor where the plaintiffs did anything differently among themselves which can justify the extremes of the penalties among the plaintiffs. The respondents knew Jones worked; Bailey was critically ill (as proven by respondent attorney Ellen Robinson)which should have exempted Jones and Bailey from being charged. Knowing Jones and Bailey were innocent of participating in the Blu Flu, respondents intentionally charged Jones and Bailey with participating in theBlu Flu. Bradly and Burnett were on prearranged vacations by respondent authority,

and this fact was known by the respondents The respondents knowingly and intentionally charged Jones, Bailey, Bradley and Burnett with Blu Flu activities in violation of the fourteenth amendment of equal protection of the law only because all were Black and the FIX was in.

III

The respondents failed to answer why the punishments varied so greatly among the plaintiffs. Jones, White, Garnett, Maggette, Brown and Morris, all darker skinned Blacks, were fired; Bailey, Smith and Murphy, all medium complexion Blacks, were demoted and suspended six months; Burnett, Leonard, Hampton, Spears, Davis, Muhammad, Williams, Pritchett, Bradley, and Woodruff, lighter complexion Blacks, were only suspended six months; O'Carroll is a white who dared to associate with Blacks, was suspended six months; Morgan and Powell were given derected verdicts

in their favor. Such penalties,known to be overly harsh and extreme,were intentionally inflicted on the plaintiffs to whip the Black Creeps in line; to make an example of plaintiffs; to prevent whites from mixing with Blacks; and that the DARKIES don't mix with the fair skinned Blacks. True APARTHEID without recourse and unmonitored (Pet. App. B pg. 9bb). This is a known and intentional violation of the plaintiffs' rights to equal protection under the fourteenth amendment and cruel and unusual punishment under the eighth amendment.

IV

The United States District Court Judge heard testimony given under oath from the respondents and their assistants that Jones worked; Bailey was critically ill; Burnett and Bradley were on prearranged vacations prior to and during the Blu Flu incident with respon-

dent authority approval; Williams, Bradley and Powell were already working at the time of the Sheriff Amnesty deadline (Pet. App. J pg 64); Powell and Morgan were given directed verdicts in their favor. The District Court Judge knew that these irregularities existed and he so stated in his judgement order (Pet. App. pp. 9-9hh); however, the District Court Judge ignored the rights of the plaintiffs as per the United States Constitution intentionally while intentionally ignoring the sworn testimony of the respondents of the innosence of the plaintiffs involved. The District Court Judge, therefore, felt comfortable in openly admitting in his judgement order (Pet. App. pp. 9-9hh) the irregularities existed but he ruled against the plaintiffs because they were Black and dared to confront white folks. A clear violation of due process.

Respondent attorneys have had more than 90 days to study and prepare a firm Respondent Brief in Opposition, since July 6, 1987 (time of service). The respondents had to have a special request before they chose to supply the United States Supreme Court with any information to clear this matter. Being given that type of consideration, the best the respondents were willing to do was to use over one-half of their pages accusing plaintiff Morris of practicing law without a lisence. The other pages were in statement of the fact that the state court had already decided against the plaintiffs, and that the Supreme Court should not look into why the attempts at APARTHEID are returning to Cook County. We are not so surprised at the respondents and their attorneys display of disregard for the rights of Blacks and the law; but, when they show the United States Supreme Court such cruel

disrespect, it is complete contempt.

## Conclucion

Respondents and respondent attorneys have not had to face and respond properly to the facts and issues in this case; therefore, the respondents and the respondent attorneys are unable to respond intelligently now. The FIX was in and the deck was stacked; the Blacks were to be whipped into line; the white deputies would continue to be separated from the Black deputies in duties and salary; noone would bother if a few Blacks had their rights trampled; and Cook County cfficials could get away with it. Respondents are trying to DUCK around the United States Supreme Court by accusing petitioners of lay law practice in a consolidated case pro-se. Respondents are attempting to ignore the fact that petitioner Morris is the

correspondent source for the petitioner group as is Iris E. Sholder is the correspondent source for the Cook County States Attorny office in this matter. Respondent attorney belittles the Supreme Court intellect in attempting to have the Supreme Court in contact with 22 petitioners in a case that the respondents had consolidated in the first instance over the objections of the petitioners. Petitioners can only pray that that the United States Supreme Court Justices will see the Cook County Sheriff attempt to induce APARTHEID into Cook County so openly; see the disregard for the Supreme Court orders and decisions on citizen rights . This contemptable behavior will only increase until it is out of hand if not corrected now. Granting certiorari will place Cook County officials on notice.

Respectfully submitted
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